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# MODULE – 1 : INTRODUCTION TO HUMAN RIGHT

## CHAPTER – 1

# Concept, Origin, Need & Types of Human Right

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## 1.1 INTRODUCTION & CONCEPTS

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. It is observed every year on December 10. On this day, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) in 1948.

Human rights, rights that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just society. Whatever their theoretical justification, human rights refer to a wide continuum of values or capabilities thought to enhance human agency or protect human interests and declared to be universal in character, in some sense equally claimed for all human beings, present and future.

It is a common observation that human beings everywhere require the realization of diverse values or capabilities to ensure their individual and collective well-being. It also is a common observation that this requirement whether conceived or expressed as a moral or a legal demand is often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution, and other forms of deprivation. Deeply rooted in these twin observations are the beginnings of what today are called "human rights" and the national and international legal processes associated with them. Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.

The enforcement of international human rights is a difficult task. Developed countries use economic pressure or military force to make other developing countries follow the rules, while less powerful nations often just speak out against violations. This makes it hard to protect human rights globally while still respecting each country's independence. It is challenging when dealing with strict governments that don't want outsiders to interfere. The international community tries to promote human rights without overstepping boundaries, particularly in countries that resist outside scrutiny.

## 1.2 DEFINING HUMAN RIGHTS

To say that there is widespread acceptance of the principle of human rights is not to say that there is complete agreement about the nature and scope of such rights or, indeed, their definition. Among the basic questions that have yet to receive conclusive answers are the following: whether human rights are to be viewed as divine, moral, or legal entitlements; whether they are to be

validated by intuition, culture, custom, social contract, principles of distributive justice, or as prerequisites for happiness or the achievement of human dignity; whether they are to be understood as irrevocable or partially revocable; and whether they are to be broad or limited in number and content.

**Section 2(1) (d) of the Protection of Human Rights (PHR) Act** defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

## 1.3 CONCEPT OF HUMAN RIGHTS IN INDIAN CONSTITUTION

"Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

➢ **The father of human rights in India-**

Justice Bhagwati the Father of the Human Rights Jurisprudence through Judicial activism converted the rights to livelihood, shelter, health and water into basic fundamental rights enforceable by courts.

## 1.4 THE CONCEPTS AND PRINCIPLES OF HUMAN RIGHTS

All are equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible. The principles are: Universal and inalienable, Interdependent and indivisible, Equal and non-discriminatory, and Both Rights and Obligations.

A right is essentially an entitlement or a justified claim. It denotes that are entitled to as citizens, as individuals and as human beings. It is something that individual consider

to be due to them; something that the rest of society must recognize as being a legitimate claim that must be upheld.

## 1.5 WHAT ARE HUMAN RIGHTS?

Human rights are universal, inalienable, indivisible, interdependent, and interrelated fundamental entitlements inherent to all human beings, regardless of race, gender, nationality, ethnicity, language, religion, or any other status. These rights are incorporated in various international instruments, such as the Universal Declaration of Human Rights (UDHR) and subsequent covenants, conventions, and treaties.

Human rights include civil, political, economic, social, and cultural rights, also include the right to life, liberty, equality before the law, freedom from torture, freedom of expression, the right to work, education, and an adequate standard of living. The State has its primary responsibility to respect, protect, and fulfill human rights through appropriate measures, legislation, and policies.

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. These rights impose obligations on states to act in certain ways or refrain from certain acts, to promote and protect the human rights and fundamental freedoms of individuals or groups. While some human rights may be limited under specific circumstances prescribed by law, certain rights, such as the prohibition of torture, are considered absolute and cannot be suspended or restricted under any circumstances.

The international human rights framework provides mechanisms for monitoring and enforcing compliance with human rights obligations, including treaty bodies, special procedures, and regional human rights courts.

## 1.6 WHAT IS THE INTERNATIONAL BILL OF HUMAN RIGHTS?

In the aftermath of World War II (1939-1945), the international community initiated efforts to codify universal human rights through a series of declarations and covenants.

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10th December, 1948, marking a pivotal moment in the development of international human rights law. The UDHR comprises 30 articles that establish fundamental principles and serve as the foundation for subsequent human rights conventions, treaties, and legal instruments.

On 16th December 1966, the UN General Assembly adopted two complementary international treaties to further elaborate on human rights:

a) The International Covenant on Economic, Social and Cultural Rights (ICESCR)

b) The International Covenant on Civil and Political Rights (ICCPR)

The ICESCR is subject to monitoring by the Committee on Economic, Social and Cultural Rights, while the ICCPR is monitored by the Human Rights Committee.

These two covenants are collectively called "the International Covenants" in legal and diplomatic contexts.

The Universal Declaration of Human Rights, in conjunction with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, constitutes the International Bill of Human Rights.

The International Bill of Human Rights forms the cornerstone of international human rights law, establishing a comprehensive framework for the protection and promotion of fundamental human rights and freedoms.

## 1.7 HOW DID THE INDIAN CONSTITUTION INCORPORATE AND UPHOLD HUMAN RIGHTS?

The Constitution of India does not explicitly use the term "human rights" but incorporates and gives effect to human rights principles.

The Preamble of the Indian Constitution establishes India as a Sovereign, Socialist, Secular, Democratic Republic, emphasizing justice, liberty, equality, and fraternity as fundamental principles.

Fundamental Rights, enshrined in Part III of the Constitution, guarantee civil liberties to all Indian citizens, including :

a) Right to Equality (Articles 14-18).

b) Right to Freedom (Articles 19-22).

c) Right against Exploitation (Articles 23-24).

d) Right to Freedom of Religion (Articles 25-28)

e) Cultural and Educational Rights (Articles 29-30).

f) Right to Constitutional Remedies (Article 32).

The Directive Principles of State Policy, contained in Part IV of the Constitution, outline socioeconomic rights and guide state policy, though not judicially enforceable.

**Article 38(1)** mandates the state to promote the welfare of the people by securing a social order based on justice - social, economic, and political.

**Article 39** provides the concept of justice, directing state policy towards securing equitable distribution of resources, equal pay for equal work, and protection of children and workers.

**Article 39A** provides for equal justice and free legal aid to ensure access to justice for all citizens.

The Supreme Court of India recognizes the interpretative value of the Universal Declaration of Human

Rights in construing constitutional provisions related to human rights.

The Constitution provides for various writs (habeas corpus, mandamus, prohibition, quo warranto, and certiorari i) as mechanisms to enforce fundamental rights. National Commissions on Minorities, Women, and Scheduled Castes have been established to protect and promote the rights of these groups.

While the right to property was originally included as a fundamental right, it was removed from Part III by the 44th Constitutional Amendment in 1978. The Indian Constitution aims to preserve human dignity and ensure equality among all citizens, regardless of caste, creed, religion, place of birth, race, color, or gender.

## 1.8 HOW DOES DIFFERENT COUNTRIES ADDRESS HUMAN RIGHTS PROTECTIONS AND CHALLENGES?

### United Kingdom

The UK is a signatory to the European Convention on Human Rights, incorporated into domestic law through the Human Rights Act 1998.

Key rights protected include the right to life, freedom from torture, right to a fair trial, and freedom of expression. The UK has an independent judiciary and a strong tradition of civil liberties, though recent anti-terrorism laws have raised concerns about privacy rights.

### United States

The US Constitution, particularly the Bill of Rights, provides the foundation for human rights protections in the country.

Key rights include freedom of speech, religion, and assembly, as well as due process and equal protection under the law. The US has a robust system of checks and balances, including an independent judiciary, to protect

individual rights. However, issues such as racial discrimination and the rights of detainees in the "War on Terror" have been subjects of human rights concerns.

**Japan:**

Japan's Constitution, particularly Article 11, guarantees fundamental human rights to its citizens.

The country is a party to major international human rights treaties, including the International Covenant on Civil and Political Rights. While Japan generally respects human rights, issues such as the death penalty and treatment of foreigners have attracted international criticism.

**China**

China's Constitution nominally guarantees a range of human rights, including freedom of speech and religion. However, in practice, the government significantly restricts many civil and political rights. Areas of concern include limitations on freedom of expression, association, religion, and treatment of ethnic minorities.China emphasizes collective rights and economic development in its human rights discourse.

**Germany**

Human dignity is inviolable under the German Basic Law (Constitution), which provides strong protections for fundamental rights (Article-1). Germany is a party to all major international and European human rights treaties. The country has a strong tradition of rule of law and an independent judiciary to protect human rights. While generally respecting human rights, Germany faces challenges in areas such as discrimination against minorities and privacy concerns in counter-terrorism efforts.

## 1.9 HOW DID STATES AND INTERNATIONAL BODIES ADDRESS AND ENFORCE HUMAN RIGHTS VIOLATIONS AMID CHALLENGES TO SOVEREIGNTY AND REGIME RESISTANCE?

- Countries must respect and protect human rights based on international agreements.
- Strict governments often resist outside pressure about their human rights record.
- Groups like charities, students, and international organizations help push governments to improve human rights.
- It is difficult to balance a country's independence with global human rights standards.
- Countries should create their own laws and systems to protect human rights.
- Democratic countries are expected to prioritize human rights.
- The world community should help all countries develop policies that respect human rights.
- Continuous effort to promote human rights can lead to improvements over time, even when governments resist at first.

## 1.10 WHAT IS THE INTERNATIONAL BILL OF HUMAN RIGHTS?

Following the second world war (1939-45), a series of declarations and covenants began to articulate universal human rights.

- In 1948, for the first time, countries agreed on a comprehensive list of inalienable human rights.
- In December of that year, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), a milestone

that would profoundly influence the development of international human rights law.

- 30 articles of UDHR provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments.
- In December 1966, the UN General Assembly adopted two international treaties that would further shape international human rights:
  a) The International Covenant on Economic Social and Cultural Rights (ICESCR) which is monitored by the Committee on Economic, Social and Cultural Rights.
  b) The International Covenant on Civil and Political Rights (ICCPR)- monitored by the Human Rights Committee. **These are often referred to as "the International Covenants".** The UDHR and these two Covenants together are known as the International Bill of Human Rights.

## 1 WHAT ARE THE OTHER TREATIES RELATED TO HUMAN RIGHTS?

- International Humanitarian Law (IHL) and international human rights law are complementary bodies of international law that share some of the same aims.
- International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.
- Convention on the Prevention and Punishment of the Crime of Genocide (1948).

- Convention on the Elimination of All Forms of Racial Discrimination (1965).
- Convention on the Elimination of All Forms of Discrimination against Women (1979).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
- Convention on the Rights of the Child (1989).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1999).
- International Convention for the Protection of All Persons from Enforced Disappearance (2006).
- Convention on the Rights of Persons with Disabilities (2006).
- In 2011, the United Nations Human Rights Council (UNHRC) passed the Guiding Principles on Business and Human Rights (UNGPs)..

## 1.12 MEANING AND SCOPE OF HUMAN RIGHTS

"Rights are those conditions of social life without which no man can seek in general, to be himself at his best."

**– *Laski***

Human rights are the most fundamental and basic rights that every person has right from the second he/she took birth and it continues till he/she dies. Human rights cannot be taken away from a person regardless of religion, caste or faith a person chooses to believe in. However, human rights can be restricted to an extent. Human rights are the pathway to getting justice. The are the protective laws. There are thirty Human rights that are described in The Universal Declaration of Human Rights (UDHR).

**Examples of Human Rights**

- Right to equality (Article 1).
- Right to life, liberty and security (Article 3).
- Freedom from torture and degrading treatment (Article 5).
- Freedom from slavery (Article 4).
- Right to education (Article 26).
- Right to peaceful assembly and association (Article 20).
- Right to adequate living standard (Article 25).
- Freedom of Belief and Religion (Article 18).
- Freedom of Opinion and Information (Article 19).

## 1.13 NATURE AND CHARACTERISTICS OF HUMAN RIGHTS

What are the nature of human rights? What are the characteristics and features of human rights?

1. **These rights are essential and fundamental :** In the absence of human rights, the society would be in a deplorable state. There would be chaos all around. Human rights are a necessity for the upliftment of people.
2. **Human rights are universal :** The rights do not discriminate against the people. These rights are available to all the people equally without taking note the varied differences among the people.
3. **Not absolute :** Human rights are never absolute. Each right has its limitations which is imperative to public health, order and morality. These rights are not unbridled.

4. **Inalienable** : Human rights are inalienable in nature. Nobody can deprive a person of these rights. Moreover, human rights are inalienable because :
   a) They cannot be rightfully taken away.
   b) They cannot be given away or be forfeited.
5. **Interdependent** : Human rights are interdependent on other rights.
6. **Dynamic** : These rights are not static. They can be modified according to the prevailing situations and conditions.
7. **Irrevocable** : The human rights are irrevocable; they cannot be taken away by anybody. No power or authority can take away these basic rights from a person.
8. **Connected with dignity** : These human rights are deeply connected with the dignity of the individuals living in a society.
9. These are similar to **moral rights.** Conscience is regarded important.
10. **Human rights are inherent** : The rights cannot be brought or borrowed from somewhere or someone. There rights are naturally existing.

## 1.14 HISTORICAL DEVELOPMENT

The expression human rights is relatively new, having come into everyday parlance only since World War II, the founding of the United Nations in 1945, and the adoption by the UN General Assembly of the Universal Declaration of Human Rights in 1948. It replaced the phrase natural rights, which fell into disfavour in the 19th century in part because the concept of natural law (to which it was intimately linked) had become controversial with the rise of legal positivism. Legal positivism rejected the theory, long espoused by the Roman Catholic Church, that law must be

moral to be law. The term human rights also replaced the later phrase the rights of Man, which was not universally understood to include the rights of women.

## 1.15 ORIGIN/ EVOLUTION OF HUMAN RIGHTS AND THE DEVELOPMENT OF INTERNATIONAL STANDARDS

Human rights developed from many sources over time, including religious beliefs, philosophical ideas, and political theories. Different cultures and historical events across the world have all contributed to shaping our understanding of human rights today. The roots of human rights can be traced back to ancient civilization and their philosophical and religious teachings. In ancient Greece, philosophers such as Socrates, Plato and Aristotle pondered the nature of justice and the role of individuals within society. These early thinkers laid the groundwork for the concept of natural law, which posits that certain rights are inherent by virtue of human nature.

Simultaneously, religious traditions played a significant role in shaping early human rights concepts. For instance, Judeo-Christian teachings emphasized the inherent dignity and worth of every individual, created in the image of God. Similarly, in ancient India, Buddhist and Hindu doctrines advocated for compassion, non-violence and respect for all living beings.

In India, the principles of Dharma in Hinduism and the teachings of Ahimsa (non-violence) in Jainism significantly contributed to the early understanding of human rights. The Buddhist emphasis on equality and compassion further enriched this perspective. Ancient Indian texts like the Vedas, Upanishads and the Arthashastra of Kautilya contain references to the duties of rulers and the rights of subjects, highlighting an early recognition of the need for just governance and the protection of individual rights.

## 1.16 THE UNITED NATIONS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The aftermath of World War II and the Holocaust underscored the urgent need for a global framework to protect human rights. The founding of the United Nations (UN) in 1945 marked a significant step toward this goal. The UN Charter affirmed the organization's commitment to promoting human rights and fundamental freedoms for all.

In 1948, the UN General Assembly adopted the **Universal Declaration of Human Rights** (UDHR), a landmark document that enumerates civil, political, economic, social and cultural rights. Drafted under the leadership of figures such as Eleanor Roosevelt, the UDHR set a global standard for human rights protection. It proclaimed that "all human beings are born free and equal in dignity and rights" and outlined specific rights, including the right to life, liberty and security; freedom of thought, conscience and religion; and the right to work, education and an adequate standard of living.

India, as a founding member of the United Nations, played an active role in the drafting of the UDHR. Indian leaders, including Hansa Mehta and M.C. Chagla, contributed significantly to the formulation of the declaration, ensuring that it reflected a universal and inclusive vision of human rights.

## 1.17 POST-UDHR DEVELOPMENTS IN INDIA

The UDHR inspired numerous international treaties and conventions aimed at protecting human rights. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966, together with the UDHR, form the International Bill of Human Rights.

In India, the adoption of the Constitution in 1950 marked a significant milestone in the country's commitment to human rights. The Indian Constitution enshrines fundamental rights, including the right to equality, freedom of speech and expression, protection from discrimination and the right to life and personal liberty. These rights are justifiable, meaning individuals can seek legal redress if their rights are violated.

Several landmark Supreme Court judgments have further strengthened human rights in India. The Kesavananda Bharati case (1973) established the doctrine of the basic structure of the Constitution, ensuring that certain fundamental principles cannot be amended. The Vishaka case (1997) led to guidelines for the prevention of sexual harassment in the workplace, underscoring the protection of women's rights.

The evolution and historical development of human rights marks humanity's recognize for dignity, justice and equality. From ancient philosophical and religious foundations to the modern international human rights framework, this journey reflects the collective aspiration for a world where every individual enjoys fundamental freedoms and protections.

India's contributions to the development of human rights, through its philosophical traditions and legal frameworks, add a rich dimension to this narrative. As we navigate contemporary challenges, the commitment to upholding and advancing human rights remains as important as ever. By learning from the past and addressing present issues, we can strive towards a more just and equitable future for all.

## 1.18 HISTORY OF HUMAN RIGHTS IN INDIA

The history of human rights in India goes back many years and shows how the country has changed in how it sees people's rights and what it values in society.

Human rights are important rights that help people feel respected and dignified. These rights make society more humane by looking after people's emotional and social well-being. This progress keeps society moving forward as capable individuals work together to make society better. In a democratic society, human rights can cover many different things because people have different needs.

The Protection of Human Rights Act, 1993, in India says human rights include life, freedom, fairness and respect, as mentioned in the Constitution and international agreements. These rights are protected by laws and the Indian courts and government make sure everyone gets them.

The history of human rights in India has deep roots within Indian political thinkers and philosophers, dating back to ancient civilizations.

In antiquated India, legal principles were founded on Dharma, which aimed to promote the well-being of all beings and prevent harm among them, as evident in Epics like Ramayana and Mahabharata. The Bhagavad Gita emphasises righteousness as the core of Dharma. The Upanishads regard Dharma as the fundamental underpinning of the entire universe. The Vedas and Smritis advocate the concept of "Vasudhaiva Kutumbakam," portraying the world as a unified family. All four Vedas underscore equality and dignity for every human.

Buddha's teachings played a significant role in safeguarding human rights. The renowned King Ashoka effectively established a welfare state for his subjects ensuring basic freedoms and rights.

Consequently, it's evident that ancient Indian literary works actively promoted and endorsed human rights, liberty, freedom and equality for all individuals, regardless of discrimination based on caste, creed, gender, sex or religion.

## 1.19 HUMAN RIGHTS IN MEDIEVAL INDIA

The Medieval period in India marks the era of Muslim rule. Before the Mughal rule, there were existing rights related to society, politics, culture and religion. However, with the arrival of the Mughals, the concept of human rights faced challenges. Nevertheless, during Akbar's reign (1526-1605), significant emphasis was placed on social, religious and political rights.

Akbar introduced a religious policy called Din-E-Ilahi (divine religion), which aimed to promote secularism and religious tolerance. Moreover, religious movements like Bhakti (Hindu) and Sufi (Islamic) played a crucial role in advancing the history of human rights in India. However, these advancements were sometimes suppressed by other Mughal Emperors such as Babar, Humayun and Aurangzeb.

## 1.20 HUMAN RIGHTS IN MODERN INDIA

The British rule in India can be seen in the Modern period. During this period, the British government of India not only restricted the freedom of its people but also built its foundation upon exploiting the masses, causing economic, political, cultural and spiritual harm to India.

After enduring colonial rule, every Indian firmly believed that the recognition, safeguarding and implementation of human rights were not only fundamental but also essential for leading a civilized life.

Key constitutional provisions in India contribute to the history of human rights in India in modern times. These

include the Preamble, Fundamental Rights, Directive Principles of State Policy, recently added Fundamental Duties, reservations for scheduled castes and tribes, and special provisions for Anglo-Indians and other backward classes.

When examining human rights in relation to the Indian Constitution, it becomes evident that the Constitution incorporates nearly all the human rights outlined in various international agreements, covenants and treaties. Some of these include :

- Universal Declaration of Human Rights, 1948.
- International Covenant on Economic, Social and Cultural Rights, 1976.
- International Covenant on Civil and Political Rights, 1976.
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965.
- Convention on the Elimination of All Forms of Discrimination against Women, 1979.
- Convention on the Rights of the Child, 1989.
- Convention on the Rights of Persons with Disabilities, 2006.

In addition to these constitutional provisions, various laws have been enacted by the Indian legislature to safeguard and promote human rights. Some significant legislations introduced by the union include :

- Protection of Human Rights Act, 1993.
- National Commission for Minorities Act, 1992.
- National Commission for Women Act, 1990.
- Protection of Civil Rights Act, 1995.

- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- Immoral Traffic (Prevention) Act, 1987.
- Bonded Labor System (Abolition) Act, 1976.
- Juvenile Justice (Care and Protection of Children) Act, 2000.
- Child Labor (Prohibition and Regulation) Act, 1986 and more.

India has also implemented numerous labour-related legislative measures to ensure social security, significantly influenced by the standards set by the International Labor Organization (ILO).

## 1.21 DEVELOPMENT OF HUMAN RIGHTS IN CONTEMPORARY INDIA

The Constitution of India, in Part III, encompasses a range of fundamental rights accessible to Indian citizens. This approach aimed to make the **Universal Declaration of Human Rights** (UDHR) legally enforceable within the country. Articles 14-30 in Part III outline potential rights for citizens. Moreover, Part IV incorporates Directive Principles, offering the State supplementary suggestions to ensure the well-being of its populace.

Initially, the judiciary had a rigid stance in handling cases. However, they later embraced the concept of "Audi Alteram Partem" to approach cases more flexibly and introduce subjectivity. This shift is evident in the interpretation of Article 21. The following judgments will help you to understand the history and development of human rights in India in the contemporary era.

In the case of A.K. Gopalan v State of Madras, Article 21 was narrowly interpreted, almost equating the right to life with mere animal existence. Yet, the landmark case of Maneka Gandhi v Union of India expanded the scope of

Article 21, linking it to Articles 14 (Right to Equality), 19 (fundamental freedoms) and 21 (Right to Life and Liberty). The concept of the Right to Life now encompasses an individual's culture, tradition and guards against potential violations of fundamental rights.

In the case of Kharak Singh v State of UP, the inclusion of the Right to Privacy under Article 21 was debated. The petitioner contested the recording of a detained individual's name, considering it a breach of privacy.

Similarly, in D.K. Basu v State of Bengal, a case dealing with custodial deaths, the Supreme Court established guidelines for the treatment of detainees. This case revealed that prisoners were often subjected to cruelty and abuse by the police, without any legal safeguards. The court ruled such behaviour as a violation of human rights and deemed it necessary to condemn such actions to protect detainees.

In the case of Olga Tellis v Bombay Municipal Corporation, the Right to Life was further linked to the Right to Livelihood. The argument was that livelihood significantly impacts an individual's quality of life and should not be considered separately from the Right to Life. The court emphasized that if someone is denied the ability to earn their chosen livelihood, their life's purpose would be undermined, leading to a violation of their rights.

The rights outlined in the Indian Constitution also focus on the welfare of women and children, as evidenced by the following cases :

- In Unni Krishnan v State of AP, compulsory primary education for children was established, which is also reflected in Article 21A of the Constitution (Part III). This article guarantees free and compulsory education for children until they reach the age of fourteen.

- The **People's Union of Civil Liberties v Union of India** case resulted in the immediate release of all child laborers, along with compensation for their efforts.
- In **Public at large v State of Maharashtra**, measures were taken to protect children from sexual exploitation.

Similarly, in Vishaka v State of Rajasthan, the Court established guidelines to prevent sexual harassment of women at workplaces, considering Articles 14, 19 and 21 (often referred to as the golden trio) of the Constitution. Additionally, **Associate Bank Officers v State Bank of India** demanded equal pay for women compared to men, aiming to eliminate gender discrimination within the organization, while keeping **Article 14** in mind.

In **State of Maharashtra v Madhukar Narayan Mandlikar**, Article 21 was interpreted differently, extending protection to the life and liberty of sex workers. The court held that even women who are labeled as having an "easy virtue" have a right to privacy, deviating from the previous ruling in **Tukaram v State of Maharashtra,** where the court ruled against the victim due to her perceived character.

In recent times, several cases have provided optimism about the judiciary's commitment to upholding human rights. The landmark case of **Naz Foundation v Govt. of NCT of Delhi** stands out, declaring that criminalizing consensual homosexual relationships violated fundamental rights as per the Constitution. Relying heavily on **Articles 19** and **21,** it argued that such laws infringed upon individuals' privacy by suppressing their sexual orientation, forcing them into secrecy and fear.

This also amounted to a breach of Article 21 by denying individuals the freedom to live according to their preferences, hindering their ability to lead a fulfilling life.

Additionally, the stance was discriminatory and regressive signifying a violation of human rights. Consequently **Section 377** was struck down.

The Sabarimala case also recognized women's Right to Religion (Article 25) and upheld their right to visit the temple. While respecting religious beliefs, the court took a middle path in its decision.

However, despite these advancements, India has witnessed setbacks in recent years. The situation in Jammu and Kashmir has been a grave human rights violation, inadequately addressed by the government. Revoking the region's special status and subsequent mistreatment of its residents, including arbitrary arrests, highlighted a major issue. Even though Right to Internet is now a fundamental right and high-speed 4G Internet is expected, the region faced prolonged Internet suspension and remains limited to 2G speed, indicating subpar living conditions.

The Protection of Human Rights Act (PHRA) advocates for the establishment of Human Rights Commissions at both the Central and State levels. The Central Commission is granted the authority to conduct trials and make enforceable decisions. While it has made notable decisions such as the investigation during the Godhra riots, its power has waned in recent years, with limited action despite ongoing violations. NGOs, empowered by the PHRA, have been more proactive in exposing violations and seeking justice for those affected.

## 1.22 NEED FOR HUMAN RIGHTS

Human rights are important because no one should be harassed or discriminated against, and because everyone should have the opportunity to develop their skills. Unfortunately, many people around the world do not have these basic rights and freedoms. Rights exist in society and

are equally available claims that allow human development. They are recognized by society and protected by the state, though not absolute. Natural rights are believed to be inherited from nature, while moral rights are based on human conscience but not enforced by law.

Human rights recognize the inherent value of each person, regardless of background, where we live, what we look like, what we think or what we believe. They are based on principles of dignity, equality and mutual respect, which are shared across cultures, religions and philosophies.In a democracy like India, rights play a critical role in its functioning by availing political, economic, and social rights to citizens. Rights are also important to protect the interests of minorities and to maintain equality.

The ideas of human rights and basic human needs are closely connected. Human rights that apply for every person because they are a human – can be seen as rights to the fulfillment of, or ability to fulfil, basic human needs. These needs provide the grounding for human rights.

## Need of Rights in a Democracy

- Necessary for the very maintenance of democracy.
- Protection of Minorities from the oppression of the majority.
- **Protection from other citizens :** Things may go wrong when some citizens may wish to take away the rights of others.
- **Protection from the government :** Sometimes elected governments may not protect or may even attack the rights of their citizens. To deter a government from violating the basic rights of citizens, some rights are hierarchically positioned over the government.

## 1.23 TYPES / CLASSIFICATION OF HUMAN RIGHTS

As guaranteed by the Universal Declaration of Human Rights (UDHR), Human Rights can be classified as :

### Social or Civil Human Rights

Social rights are those rights necessary for an adequate standard of living, including rights to health, shelter, food, social care, and the right to education ( Articles 6 to 14 ICESCR). The economic, social and cultural rights, including the rights of the minorities are collectively known as the "Security Oriented Human Rights" because these rights collectively provide and guarantee the essential security in the life of an individual. In the absence of these rights, the very existence of human beings would be in danger. These are also known as the "Second Generation of Human Rights". They are also referred to as Red Rights or also as positive rights. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by (1) the Covenant on Civil and Political Rights and (2) the Covenant on Economic, Social and Cultural Rights in December 1966.

**Each one is entitled to :**

a) Right to life, liberty and security.

b) Right to freedom from slavery and servitude.

c) Right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

d) Right to freedom from arbitrary interference with privacy, family, home or correspondence.

e) Right to marry and have family and right to property.

**Political Human Right**

In general, political rights are those set out in Articles 19 to 21 UDHR and also codified in the ICCPR. They include freedom of expression, freedom of association and assembly, the right to take part in the government of one's country and the right to vote and stand for election at genuine periodic elections held by secret ballot (Articles 18, 19, 21, 22 and 25 ICCPR). The seventeenth, eighteenth and nineteenth centuries contributed and strengthened the political rights, which assured civil and political liberties. The Civil and Political Human Rights are collectively known as 'Liberty Oriented Human Rights' because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights. The seventeenth, eighteenth and nineteenth centuries contributed and strengthened the civil and political rights, which assured civil and political liberties. The Civil and Political Human Rights are collectively known as 'Liberty Oriented Human Rights' because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

To take part in political processes, each one of us is entitled to :

a) Right to nationality.

b) Right to equality before the law and equal protection of law.

c) Right to judicial remedies, fair trial and freedom from arbitrary arrest, detention or exile.

d) Right to freedom of thought, expression, belief, faith, conscience and religion.

e) Right to freedom of peaceful assembly and association.

f) Right to take part in government affairs and equal access to public service.

g) Right to equal suffrage.

h) Right to freedom of movement and right of asylum etc.

**Economic Human Rights**

The economic and social rights are listed in Articles 22 to 26 UDHR, and further developed and set out as binding treaty norms in the ICESCR. These rights provide the conditions necessary for prosperity and well-being. The twentieth century contributed to the development and strengthening of economic, social and cultural rights and the rights of minorities as well. These rights aim at promotion of the economic and social security through economic and social upliftment of the weaker sections of the society. These rights are essential for dignity of person hood as well as for the full and free development of human personality in all possible directions.

These rights ensure a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to civilized living

Each one of us is entitled to certain economic human rights :

a) Right to social security.

b) Right to work and the right to equal pay for equal work.

c) Right to form trade unions.

d) Right to rest and leisure.

e) Right to food, health and an adequate standard of living.

**Cultural Human Rights**

The UDHR lists cultural rights in Articles 27 and 28: the right to participate freely in the cultural life of the community, the right to share in scientific advancement and the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (Also refer to Article 15 ICESCR and Article 27 ICCPR). To protect different cultures, customs, and traditions, we are entitled to :

a) Right to participate in the cultural life of the community.

b) Right to enjoy the art and to share in the scientific advancement and its benefits.

c) Right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which the individual is the author.

d) Right to a social and international order in which the human rights as provided in the Universal Declaration can be fully realized.

## 1.24 THE DEVELOPMENT & SOLIDARITY HUMAN RIGHTS

The Development Oriented Human Rights are of a very recent origin in the late twentieth century. These rights enable an individual to participate in the process of all round development and include environmental rights that

enable an individual to enjoy the absolutely free gifts of nature, namely, air, water, food and natural resources, free from pollution and contamination.

These are known as the Third Generation of Human Rights or Green Rights. They are also called as Solidarity Rights, because their implementation depends upon international cooperation.

Solidarity rights are of special importance to developing countries, because these countries want the creation of an international order that will guarantee to them the right to development, the right to disaster relief assistance, the right to peace and the right to good government.

## SELF STUDY

**I. Answer the Following :**

1. Define the term human rights. Bring out any six characteristics of human rights?
2. Who were the propagators of natural rights theory? What did they state in their theories?
3. State in detail the landmarks in the development of human rights?
4. Explain the theory of three generations of human rights?
5. Discuss in detail the different bases of classifying rights?
6. Name the three generations of human rights.
7. What is meant by civil and political rights?
8. Bring out the meaning of development oriented right?
9. Differentiate between rights of citizens and for all persons.
10. Write a note on development of human rights in contemporary India
11. Explain the development of India post UDHR?

12. Write a note on :
    a) History of human rights in India
    b) Human rights in medieval India
    c) Human rights in modern India
13. Describe in detail the need for human right in India?
14. How do different countries address human rights protections and challenges?
15. What are the other treaties related to human rights?

MODULE – 1 : INTRODUCTION TO HUMAN RIGHT

# CHAPTER – 2

# Constitutional Provisions for Protection of Human Rights

Synopsis...


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2.2 The Constitutional Provisions of India
2.3 Constitutional Provisions in Education
2.4 The Right of Children to Free and Compulsory Education Act
2.5 What does the right to Constitutional Remedies Provide for?
2.6 The Constitutional Provisions for Safeguarding Rights
2.7 The Constitutional Provisions for Protecting Human Cultural Rights the Society
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2.14 Disabled / Physically Challenged Right (Human Rights) Und Constitutional Framework
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2.18 The Primary Beneficiaries of this Act
2.19 Who is Defined as 'Respondent' by this Law?
2.20 The New Law Defines Domestic Abuse
2.21 How does the Law Ensure that a Wife Who Takes Legal Recourse in the Event is not Intimidated or Harassed?
2.22 Prohibition of Inhumane or Degrading Treatment
2.23 Right to Private and Family Life
2.24 Right to Fair Trial
2.25 Prohibition of Discrimination
Self Study
Questions

## 2.1 INTRODUCTION

India's struggle for freedom basically was a struggle for self-determination, for freedom of equality, liberty and justice. These are the core values of the vision of Human Rights. In fact even earlier social reformers have emphasized the values of civil liberties. Western liberal education, growing repressive character of the colonial power and consciousness in various social groups further added to the evolution of demand for rights. The Indian National Congress which spearheaded the National movement throughout emphasized the idea of rights. The struggle against the Rowlatt Act in 1919 was a landmark in the history of civil liberties movement in India. In 1930 at the time of civil disobedience movement there also emerged the idea of an organized civil rights movement. This took the shape of "Indian Civil Liberties Union" (ICLU) formed in August 1936. Rabindranath Tagore and Sarojni Naidu became the Honorary President and president respectively on the request of Jawaharlal Nehru, who had mooted the idea of 'ICLU'. During freedom struggle, the defence of civil

liberties was not narrowly conceived in terms of o political group or party. It was extended to the defence of a groups without concern about ideological or strateg differences.

## 2.2 THE CONSTITUTIONAL PROVISIONS OF INDIA

Religious liberty, citizenship, Separation betwe religion and state, The basic structure theory of India construction, India is one of the region's most secul countries. The constitutional provisions of India are divide into 22 sections and have 395 articles. The constitution provisions of India define the formal organization of th state and the functions of the central govt. It al establishes the interaction between the central governmen

The provisions are a rule or legislation that is clear defined in the constitution of a country or state. Regardle of the circumstances, provisions cannot be modifie through the courts or common law. On the other han Constitutional principles are a basic blueprint for how country or state ruled by that constitution will indeed b run. If provisions are amended, they must go through special process that includes approval from both the centr government and state ratification. A constitution provision is a law that is not formed from statute common law but rather is inscribed within the foundi laws.

### Constitutional Provisions Meaning

Section 18 of Article VII of the State Constitution, amended as well as through the impact on the relevan date, as well as any amendment thereunder or anoth amendment towards the State Constitution referri towards the Permanent University Fund hereaft authorized by the voting public of the State are referred as Constitutional Provisions meaning.

Another Constitutional provision meaning is a law enshrined in the United States Constitution and is not derived from a rule or statute. It establishes the polity's fundamental rights, responsibilities, and organization. Unless the Constitution's amendment procedure is followed, these provisions cannot be easily changed.

### Constitutional Provisions Examples

The constitutional provisions of India specify detailed provisions for various topics, including the formation of the three major branches of the US government. Congress, as well as its main powers, are established in Article I of the Constitution. For example, this section establishes a House of Representatives.

The presidency and the executive branch are established by Article II of the Constitution. The president has the authority to serve as Commander in Chief, oversee the military, and Issue pardons. The Supreme Court, the rest of the judicial branch, and the Senate have the authority to control international trade. Furthermore, Article I gives Congress the power to enact a law that affects the entire country.

## 2.3 CONSTITUTIONAL PROVISIONS IN EDUCATION

We'd talk about **Constitutional provisions in education**. There are numerous sections and articles in the Indian constitution that significantly impact education. Its prologue encapsulates the country's ethos, beliefs, and goals. The Indian Constitution has entrusted the Central Government of India with several educational responsibilities. Education is country's aspirations to help it achieve national development and integration. Through education, one can instil in citizens the spirit and ideals of Indian democracy.

**Constitutional provisions in the education of India**

establish requirements for education in the major fields of education listed below :

| | Provisions | Article |
|---|---|---|
| 1. | Right of free and compulsory education. | 45 |
| 2. | Right to education. | 21A |
| 3. | Education for women. | 15(1) (3) |
| 4. | Promotion of education and economic interests of SC, ST, and other weaker sections. | 46 |
| 5. | Religious education. | 25, 28(1)(2)(3 |
| 6. | Education of minorities, protection of interests of minorities. | 29 |
| 7. | Right of minorities to establish and administer educational institutions. | 30 |
| 8. | Instruction in mother-tongue at the primary stage. | 350-A |
| 9. | Promotion of Hindi. | 351 |
| 10. | Education in union territories. | 239 |
| 11. | Fundamental duty to provide the opportunity for education. | 51(A) |

## 2.4 THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT

The Right of Children to Free and Compulsory Education Act, or Right to Education Act (RTE), is an Act of Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free compulsory education for children aged 6 to 14 years in India under Article 21A of the Indian Constitution. When the act came into force on 1 April 2010, India became one of 135 countries to make education a fundamental right of every child. It is the most important Constitutional provision in education in India.

## 2.5 WHAT DOES THE RIGHT TO CONSTITUTIONAL REMEDIES PROVIDE FOR?

The Indian Constitution is considered to be the supreme law for every Indian citizen. Thus, the Part III of the constitution from Article 12-35 highlights the important Fundamental Rights. Mainly, Article 32 explains the right to constitutional remedies, which is a crucial fundamental right.

Citizens experiencing a breach of their fundamental right can apply to the Supreme Court under Article 32. Hence, they don't have to wait for the dilatory phase under Article 32. It means that they don't need to apply to the lower court and gradually move ahead.

Therefore, Article 32 provides a simple, guaranteed, and faster remedy for the enforcement of constitutional rights. Article 32 also states that the Supreme Court has the power to write, order, and issue directions. Article 226 empowers to issue writs by the High courts .

With the inclusion of Article 32 under fundamental rights, the Indian Supreme Court acts as a protector. Any application drafted under the Article 32 cannot be rejected under any technical grounds. Also, with the prescribed writs, the court can pass another order.

## 2.6 THE CONSTITUTIONAL PROVISIONS FOR SAFEGUARDING

**Article 39** : The State shall, in particular, direct its policy towards securing. Article 39 (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

## 2.7 THE CONSTITUTIONAL PROVISIONS FOR PROTECTING HUMAN RIGHTS

**Article 12 to 35 contained in Part III of the Constitution** deal with Fundamental Rights. These are Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment. The Constitution offers all citizens individually and collectively, some basic freedoms. These are guaranteed in the Constitution in the form of six broad categories of Fundamental Rights, which are justifiable.

1. Right to equality, including equality before law prohibition of discrimination on grounds of religion race, caste, sex or place of birth, and equality opportunity in matters of employment.
2. Right to freedom of speech and expression assembly, association or union, movement residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality).
3. Right against exploitation, prohibiting all forms forced labour, child labour and traffic in human beings.

4. Right to freedom of conscience and free profession, practice, and propagation of religion.
5. Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice; and
6. Right to constitutional remedies for enforcement of Fundamental Rights.

## 2.8 THE CONSTITUTIONAL PROVISIONS GIVEN TO SAFEGUARD THE CULTURAL RIGHTS OF THE SOCIETY

Article 29 of the Indian Constitution safeguards the cultural and educational rights of minorities. It aims to protect the interests of religious, linguistic, and cultural minorities in India. Article 29 states that any citizen residing in the territory of India having a distinct language, script, or culture has the right to conserve the same. The same article states that no citizen will be denied entry to an educational institution based on religion, class, caste, or language

## 2.9 CONSTITUTIONAL PROVISIONS ARE THE SET OF RULES OR laws

Constitutional Provisions are the set of rules or laws that come under a country's Constitution. It establishes the fundamental rights and duties of the citizens. These cannot be changed or altered by the court or common law. If the provisions are to be changed, they must go through a specific process.

- **Article 352 on national Emergency:** Article 352 is the article under which the national emergency can be declared by the President of India for the safety and security of Indian citizens during war etc.

- Article 352 is the National Emergency Act where an emergency is announced by the President of India due to any armed rebellion, war or any other external attack or aggression. 44th Amendment of Indian constitution included or substituted the term 'armed rebellion' by replacing 'internal disturbance' phrase. In India, the emergency state was declared 3 times in which the first one was during the war of India and China from October 26,1962 till January 10, 1968 when the Indian security and safety was endangered due to the external attacks or aggression while the second one was when the emergency was announced during the war of India and Pakistan from December 3 to December 17 1971 and the third and the last one was from June 25, 1975 to March 21, 1977 which was declared by Fakhruddin Ali Ahmed due to 'internal disturbances' or the instability of political circumstances under leadership of Indira Gandhi so that she can overrule the order of High Court of Allahabad against her and was the emergency under Article 352 in 1975.

## 2.10 TYPES OF EMERGENCIES

There are 3 types of emergencies that the Indian President can declare or announce and they are :

- **State Emergency (Article 356) :** This is the emergency which is declared under the Article 356 of Indian Constitution by the Indian President for 2 months.
- **National Emergency (Article 352) :** When the emergency occurs due to external aggression, war or armed rebellion which threatens the governance peace, security and stability of the country India then under Article 352, the Indian President ca

announce the national emergency. The national emergency is applicable for a duration of 6 months and if required then it can be renewed or extended by the Parliament approval after 6 months.

- **Financial Emergency (Article 360)** : This is the emergency which is declared under the Article 360 of Indian Constitution by the Indian President.

## 2.11 THE EFFECTS OF THE ARTICLE 352

Article 352 will bring various changes in the setup of the running of the country. For uniformity purposes of the administration the country's federal framework will turn to an unitary one. The extraordinary or special powers are given to the President of India in order to figure out the instructions and directions to the state. The effects of the Article 352 can be done in following three manners :

- It will affect the life of the legislature.
- It will have the effect on the Fundamental Rights of an individual.
- It will also affect the relations of Centre and State.

## 2.12 GROUNDS FOR THE NATIONAL EMERGENCY UNDER ARTICLE 352

The reasons for national emergency under Article 352 are as follows :

- When the safety and security of the country is in danger due to armed rebellion, external aggression or war. The emergency of war and external aggression is regarded as the external emergency while the emergency of armed rebellion will be regarded as the internal emergency.
- The 44th Amendment introduced the term armed rebellion by replacing the term internal disturbances and this was done because it was

believed that the term internal disturbances would be misinterpreted which may lead to states political persecution.

- The Indian President can also declare the national emergency even before the armed rebellion, external aggression or war if he or she is convinced that there might be some serious danger.

Article 352 is an article which states the National Emergency and was declared by the President of India when he feels the danger of armed rebellion, war or external aggression to the country which will affect the peace and stability of India. He can declare an emergency even before any war or attack if he/she finds some danger to the country. the 44th Amendment changes the term internal disturbances to armed rebellion in order to decrease the state political persecution. The emergency under Article 352 in 1975 was declared due to instability of political issues under the Prime Minister Indra Gandhi from June 25, 1975 to March 21, 1977.

## 2.13 CONSTITUTIONAL RIGHTS AND SAFEGUARDS PROVIDED TO THE MINORITIES IN INDIA

1. **Constitutional safeguards** for religious and linguistic minorities of India Though the Constitution of India does not define the word 'Minority' and only refers to 'Minorities' and speaks of those 'based on religion or language', the rights of the minorities have been spelt out in the Constitution in detail.

2. **'Common Domain' and 'Separate Domain'** of rights of minorities provided in the Constitution The Constitution provides two sets of rights of minorities which can be placed in 'common domain' and 'separate domain'. The rights which fall in the 'common domain' are those which are applicable to all the citizens of our country. The rights which fall in the 'separate domain'

are those which are applicable to the minorities only and these are reserved to protect their identity. The distinction between 'common domain' and 'separate domain' and their combination have been well kept and protected in the Constitution. The Preamble to the Constitution declares the State to be 'Secular' and this is a special relevance for the Religious Minorities. Equally relevant for them, especially, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured 'liberty of thought, expression, belief, faith and worship and 'equality of status and of opportunity.'

3. **'Common Domain',** the Directive Principles of State Policy – Part IV of the Constitution The Constitution has made provisions for the Fundamental Rights in Part III, which the State has to comply with and these are also judicially enforceable. There is another set of non-justiciable rights stated in Part IV, which are connected with social and economic rights of the people. These rights are known as 'Directive Principles of State Policy', which legally are not binding upon the State, but are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". (Article 37). Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities :

a) **[Article 38 (2)] :** obligation of the State 'to endeavour to eliminate inequalities in status, facilities and opportunities' amongst individuals and groups of people residing in different areas or engaged in different vocations.

b) **The constitutional safeguards for tribes in India- Article 46 :** The State shall promote, with special

care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

c) **Article 51A** which is of special relevance for the Minorities stipulates as under : (i) citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic and regional or sectional diversities.

4. The Constitution has provided a definite space for both the 'domains' i.e. 'common' as well as 'separate'. In Part III of the Constitution, which deals with the Fundamental Rights is divided into two parts viz.

a) the rights which fall in the 'common domain' and

b) the rights which go to the 'separate domain'.

In the 'common domain', the following fundamental rights and freedoms are covered :

i) **[Article 14]** people's right to 'equality before the law and 'equal protection of the laws'.

ii) **[Article 15 (1) & (2)] :** prohibition of discrimination against citizens on grounds of religion, race, caste sex or place of birth

iii) **Article 15 (4)] :** authority of State to make 'any special provision for the advancement of any socially and educationally backward classes of citizens (besides the Scheduled Castes and Scheduled Tribes).

iv) **[Article 16(1) & (2)] :** citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and

prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth.

v) **[Article 16(4)]** : Authority of State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

vi) **[Article 25(1)]** : people's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights.

vii) **[Article 26]** : right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law.

viii) **[Article 27]** : prohibition against compelling any person to pay taxes for promotion of any particular religion.

ix) **[Article 28]** : people's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.

## 5. 'Separate Domain' of Minority Rights

The Minority Rights provided in the Constitution which fall in the category of 'Separate Domain' are as under :

i) **[Article 29(1)]** : right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'.

ii) **[Article 29(2)]** : restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'.

iii) **[Article 30(1)]** : right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice.

iv) **[Article30 (2)]** : freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State.

v) **[Article 347]** : special provision relating to the language spoken by a section of the population of any State.

vi) **[Article 350 A]** : provision for facilities for instruction in mother-tongue at primary stage.

vii. **[Article 350 B]** : provision for a Special Officer for Linguistic Minorities and his duties; and

viii) **[Article 25]** : Sikh community's right of 'wearing and carrying of kirpans;

## 6. India's multi-culturalism interwoven in the Constitution

The various Articles of the Constitution providing rights to the minorities, clearly and firmly point out to only one direction : that of a multi-religious, multi-cultural multilingual and multi-racial Indian society, interwoven into an innate unity by the common thread of national integration and communal harmony. By the yardstick adopted by the framers of the Constitution and crystallized into its provisions the Indian Nation is not just a conglomeration of individual inhabitants of this State; it comprises of two distinct categories of constituents. The two-tier commonwealth of Indian Nation includes, on one hand, every citizen of India individually and, on the other hand, the multitude of religious, linguistic, cultural and ethnic groups among its citizens. The Indian Nation is an enormous coparcenary in which the individual citizens are also members of their own respective branches taking the form of religious, cultural, linguistic and ethnic groups

And all these groups, like all individuals, have the same Fundamental Rights to enjoy and the same Fundamental Duties to discharge.

### 7. Protection of weaker sections in Indian pluralistic society

The social pluralism of India, as fortified by the unique Constitutional concept of secularism, raises the need for the protection and development of all sorts of weaker sections of the Indian citizen, whether this 'weakness' is based on numbers or on social, economic or educational status of any particular group. The Constitution, therefore, speaks of Religious and Linguistic Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes and makes or leaves room for making for them special provisions of various nature and varying import.

## 2.14 WOMEN'S HUMAN RIGHTS UNDER CONSTITUTIONAL FRAMEWORK

The Indian Constitution is the supreme law of India; all other laws get authority from the provisions of the Constitution. 'Indian constitution secures for all its citizens

"Justice" - social, economic and political,

"Liberty" - of thoughts, expression, belief, faith and worship,

"Equality"- of status and of opportunity and dignity of the individual and the integrity of the nation.' With such wordings, the preamble of the Indian constitution ensures the basic human rights of all men as well as women. However, a special protection has also been provided to women under the provisions of the constitution from the perspective of human rights of women.

### 1. Right to Equality under Article 14

Article 1 of UDHR declares that all human beings are born free and equal in dignity and rights and article 7

provides for equality before law. Under the constitutional framework of India the status of women is equal to men in the eyes of law because the state cannot deny to any person equality before the law or the equal protection of laws within the territory of India.

### 2. Right Against Discrimination

Article 2 of UDHR assures all the rights and freedoms without any discrimination. Article 7 also talks about equal protection against discrimination. Indian citizens can also not be discriminated on the basis of their sex by any government authority because the state cannot discriminate against any citizen on ground only of religion, race, caste, sex, and place of birth or any of them.

Furthermore, No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to :

1. Assess to shops, public restriction, hotels and places public entertainment or
2. The use of wells, tanks, bathing Ghats, roads and places of public resort maintain wholly or partly out of state funds or dedicated to the use of the general public. However, state can make special provisions for women under clause (3) of the article as exceptions to the principles of non-discrimination.

### 3. Right to Equal opportunity in Public Employment

Women are able to get equal opportunity pertaining to public employment because there is equality of opportunity for all citizens, whether males or females, in matters relating to employment or appointment to any office under state and no citizen can, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the state. However, physically

or disabled government has authority to make rules for reservation.

### 4. Right to Freedom of Speech and Expression

Everyone has right to freedom of opinion and expression under article 19 of UDHR. Women can raise their voice for any matter affecting them by using their right under Article 19 (1) (a) of Indian Constitution which guarantees freedom of speech and expression to all citizens.

### 5. Right to work

UDHR in its article 23(1) confirms right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment to everyone. Recognizing such right in its structure Indian Constitution through article 19 (1) (g) provides the right to work to Indian women by ensuring freedom to all citizens for occupation, profession and business.

### 6. Right to Life and Personal Liberty

Right to life, liberty and security of person has been recognized under article 3 of UDHR. Article 21 of Indian Constitution also provides right to live to all women and men as per their own choice by constitutional guarantee that no person shall be deprived of his/her life or personal liberty except according to procedure established by law.

### 7. Right against Exploitation

Article 5 of UDHR protects against torture or cruel, inhuman or degrading treatment. Indian Constitution under article 23 protects against human trafficking and bonded labour, which works as a shield for women's safety and ensures their right to work. For implementing the idea of this article, Indian parliament enacted the Suppression of Immoral Trafficking in women and girls Act, 1956 which was renamed as the Immoral Trafficking (prevention) Act, 1956. Constitutional Scheme of Directive Principles of State

Policy directs the state to secure the idea of women's righ in the society. These are the relevant articles in this regard

### 8. Right to Livelihood

Article 39 (a) provides that the citizen, whether men o women, equally have the right to an adequate means t livelihood. Same right has been recognized under articl 23(3) of UDHR which says that everyone who works has th right to just and favourable remuneration.

### 9. Equal Pay for Equal Work

Under article 39 (d), Indian Constitution ensures tha the state shall, particular; direct its policy towards securin that there is equal pay for equal work for not only men bu also women. UDHR under article 23(2) also provides suc right.

### 10. Just and Human Conditions of Work and Maternit Relief

Article 42 of the Constitution directs that the sta shall make provision for securing just and huma conditions of work and for maternity relief.

### 11. Right of Constitutional Remedies

In case of the violation of any of these fundamenta rights, the aggrieved woman can move Supreme Court an High Court and file writ petition under Article 32 & Articl 226 for seeking remedy but there is no such mechanis available in case of Directive Principles of State Polic which are not enforceable by any court under wr jurisdiction. The state is under duty to implement suc principles through its policy. Hence, Directive Principles State Policy impose a moral obligation on the state for the implementation.

Only when women and girls have full access to the rights from equal pay and land ownership rights to sexu rights, freedom from violence, access to education, an

maternal health rights will true equality exist. Only when women have taken leadership and peacemaking roles and have an equal political voice will economies and countries be transformed. And only then will all women and girls have the self-determination they are entitled to.

## 2.14 DISABLED/ PHYSICALLY CHALLENGED RIGHT (HUMAN RIGHTS) UNDER CONSTITUTIONAL FRAMEWORK

Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. Right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Right to protection against exploitation, discrimination, and abuse. Right to qualified legal aid. Right to consult organizations of disabled persons for in matters of concern.

- **The Disabled Persons Protection Act :** (1) This Act may be called the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government may. by notification, appoint
- **A Disabled Policy :** It is an overarching policy that has been developed to ensure that all People with Disabilities, who are poor, vulnerable and marginalized receive adequate economic and social protection, attain access to social welfare programs which will promote development and enhance their social functioning.

## 2.15 HIGHLIGHTS / SUMMARIES OF DISABLED PERSONS PROTECTION ACT

### 1. Persons with disabilities have the right to equality, dignity and respect for integrity

Section 3(1) of the RPwD Act requires the appropriate government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

### 2. The right to education for disabled people

Article 24(2)(b), CRPD also requires states to ensure that persons with disabilities can access an inclusive, quality, and free primary education and secondary education on an equal basis with others

### 3. The right to health of disabled people

The right to health as covered under the UN Convention on the Rights of Persons with Disabilities ("UNCRPD"), ratified by India, requires that the State shall ensure that persons with disabilities have the right to enjoyment of the highest attainable standard of health without discrimination on the basis of disability .

### 4. An example of disability discrimination

Disability discrimination is when someone puts a person at a disadvantage because of their condition or impairment. This could include: employer not providing reasonable adjustments that would help disabled employee to do their job. An employer withdrawing a job offer when they learn the prevailing condition.

### 5. Right of persons with disabilities Act 2006 National Policy for Persons with Disabilities, 2006

It is in consonance with the basic principles of equality freedom, justice and dignity of all individuals that are enshrined in the Constitution of India and implicitly

mandate an inclusive society for all, including persons with disabilities.

### 6. Article 253 of the Constitution : Differently-abled welfare in India

The Constitution in the schedule of subjects lays direct responsibility of empowerment of disabled persons on the State governments. Therefore, the primary responsibility to empower the disabled rests with the State governments.

### 7. The zero rejection policy of SSA : SSA's Policy on Inclusion

Hence, SSA has adopted a zero rejection policy. This means that no child having special needs should be deprived of the right to education and taught in an environment, which is best, suited to his/her learning needs. These include special schools, EGS, AIE or even home-based education.

### 8. The Rights of Persons with Disabilities Act 2016

All children with benchmark disabilities between 6 and 18 years shall have the right to free education. The act increased the reservation for people with benchmark disabilities from 3% to 4% in government jobs and from 3% to 5% in higher education institutes.

### 9. The National Trust Act for Disabilities

National Trust is a statutory body set up under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The National Trust has been set up to discharge two basic duties- legal and welfare.

### 10. The Sarva Shiksha Abhiyan Policy (SSA)

'Education for all campaign'), or SSA, is an Indian Government programme aimed at the universalisation of Elementary education "in a time bound manner", the 86th Amendment to the Constitution of India making free

and compulsory education to children between the ages of 6 and 14 (estimated to be 206 million children). The core objective of the SSA Programme is to attain the Universalisation of Elementary Education (UEE) in the country. The overall goal of the Sarva Shiksha Abhiyan is to include universal access and retention, bridging gender and social gaps in education and enhancing levels of learning for children.

### 11. The Rights of Disabled People in India

Under the Constitution the disabled have been guaranteed the following fundamental rights: The Constitution secures to the citizens including the disabled a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.

## 2.16 THE HUMAN RIGHTS FOR DOMESTIC VIOLENCE

### Domestic Violence Act for Women's empowerment in India

Domestic Violence Act 2005 is the first significant attempt in India to recognize domestic abuse as a punishable offence, to extend its provisions to those in live-in relationships, and to provide for emergency relief for the victims, in addition to legal recourse.

**Right to Life :** Everyone has the right to life and the State has an obligation to actively protect it. Where state authorities know, or ought to know, that someone's life is at real and immediate risk, they should take all necessary and reasonable actions to avoid that risk, which includes both first response and structural assistance. It also has an obligation to investigate any case of unnatural death and take the necessary responsible measures. If a person's life has been at risk as a result of domestic violence, but the pertinent authorities such as the police or the courts have failed to take the appropriate actions, these situations may result in a violation of the right to life.

**Article 2** of the European Convention on Human Rights, which protects the right to life, contains two positive obligations for Member States, both of which apply in the context of domestic violence :

- **A substantive Obligation :** The State has a general obligation to protect by law the right to life and to prohibit the intentional deprivation of life. Therefore, States must secure this right by putting in place effective criminal law provisions to punish and deter the commission of offences (including domestic violence) and must take preventive operational measures to protect individuals whose life is at risk. This means, for example, that state authorities must immediately respond to allegations of domestic violence and take appropriate measures to protect the victims.
- **A procedural Obligation :** The State has a duty to carry out an effective investigation into alleged breaches of the right to life. Therefore, in the context of domestic violence, the State must investigate when an individual has been killed as a result of the use of force by the individual's partner.
- **Example :** A State was found liable for violating a woman's right to life who was shot dead by her husband despite having complained several times about her husband's violent attitude towards her. The police authorities had failed to respond promptly to the victim's complaints and had failed to carry out a proper assessment of her situation. As a result, no action was taken to prevent the husband from killing his wife, the authorities did not arrest him for breaching his restraining order. The Court held that the State had violated its positive substantive obligation to protect the woman's right to life.

## 2.17 A LEGISLATION FOR DOMESTIC VIOLENCE

Domestic violence is among the most prevalent and among the least reported forms of cruel behaviour. Till the year 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Section 498A of the Indian Penal Code) were limited. There was no emergency relief available to the victim; the remedies that were available were linked to matrimonial proceedings; and the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser.

Also the relationships outside marriage were not recognised. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act was passed.

## 2.18 THE PRIMARY BENEFICIARIES OF THIS ACT

Women and children. Section 2(a) of the Act will help any woman who is or has been in a domestic relationship with the 'respondent' in the case. It empowers women to file a case against a person with whom she is having a 'domestic relationship' in a 'shared household', and who has subjected her to 'domestic violence'.

Children are also covered by the Act; they too can file a case against a parent or parents who are tormenting or torturing them, physically, mentally, or economically. Any person can file a complaint on behalf of a child.

## 2.19 WHO IS DEFINED AS 'RESPONDENT' BY THIS LAW?

Section 2 (q) states that any adult male member who has been in a domestic relationship with the aggrieved person is the 'respondent'. The respondent can also be a relative of the husband or male partner. Thus, a father-in-law, mother-in-law, or even siblings of the husband and other relatives can be proceeded against.

## 2.20 THE NEW LAW DEFINES DOMESTIC ABUSE

Section 3 of the law says any act / conduct / omission / commission that harms or injures or has the potential to harm or injure will be considered 'domestic violence'. Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Even a single act of commission or omission may constitute domestic violence in other words, women do not have to suffer a prolonged period of abuse before taking recourse to the law.

## 2.21 HOW DOES THE LAW ENSURE THAT A WIFE WHO TAKES LEGAL RECOURSE IN THE EVENT IS NOT INTIMIDATED OR HARASSED?

An important aspect of this law is that it aims to ensure that an aggrieved wife, who takes recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pending disposal of the case prohibit / restrict the wife's continued access to resources / facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household. In short, a husband cannot take away her jewelry or money, or throw her out of the house while they are having a dispute.

**The main rights of a woman as recognized by this law**

- The law is so liberal and forward-looking that it recognizes a woman's right to reside in the shared household with her husband or a partner even when a dispute is on Thus, it legislates against husbands who throw their wives out of the house when there is a dispute. Such an action by a husband will now be deemed illegal, not merely unethical.

- Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home she shares with the abusive partner. Section 17 of the law, which gives all married women or female partners in a domestic relationship the right to reside in a home that is known in legal terms as the shared household, applies whether or not she has any right, title or beneficial interest in the same.
- The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner.
- The law, significantly, recognizes the need of the abused woman for emergency relief, which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law.
- A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section 498A of the Indian Penal Code.
- Sections 18-23 provide a large number of options for legal redressal. She can claim through the courts Protection Orders, Residence Orders, Monetary Relief, Custody Order for her children, Compensation Order and Interim/ Exparte Orders.
- If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges under Section 498A can be framed by the magistrate, in addition to the charges under

this Act. Further, the offenses are cognizable and non-bailable. Punishment for violation of the rights enumerated above could extend to one year's imprisonment and/or a maximum fine of ₹ 20,000.

a) Women have the right to security of person and freedom from torture and cruel and inhuman or degrading treatment. The Universal Declaration of Human Rights outlines an individual's fundamental right to be free from violence and abuse.

b) The Domestic Violence Act was meant to provide protection to the wife or female live-in partner from acts of domestic violence at the hands of her husband or male live-in partner. The laws within the act also extend to protect women who are widows, mothers or sisters from acts of domestic violence.

c) A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section 498A of the Indian Penal Code. Sections 18-23 provide a large number of options for legal redressal.

## 2.22 PROHIBITION OF INHUMANE OR DEGRADING TREATMENT

Everyone has the right to humane and dignified treatment. This means that the State must actively take immediate and structured protective measures against inhumane or degrading treatment and investigate any cases where such treatment has been meted out by private individuals. Both the lack of active protection and the lack of investigation may result in a human rights violation. Acts of domestic violence may be considered to be inhumane or

degrading in cases such as physical ill-treatment, sexual abuse, kidnapping, stalking and threats of assault.

However, in order for treatment to be deemed inhumane or degrading, the suffering must have reached at least a minimum level of severity. When assessing whether such severity has been reached, such things as the duration of the situation, the physical and psychological effects, the victim's age, gender and condition of health would be taken into account. These criteria are often evaluated together.

Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, in the absence of physical injury, a treatment can be considered inhumane when it humiliates an individual or arouses feelings of fear anguish or inferiority capable of breaking the individual's moral and physical resistance.

## 2.23 RIGHT TO PRIVATE AND FAMILY LIFE

Everyone has the right to respect for private and family life. The State has a positive obligation to take the necessary protective measures for individuals to be able to enjoy their private and family life. Acts of domestic violence can seriously prevent families from peacefully enjoying their family life and cause them continuing distress and anxiety. If the pertinent state authorities fail to take the necessary protective measures, this may result in a violation of the right to private and family life. Considering domestic violence to be a private matter is incompatible with the authorities' obligation to protect the family life of individuals.

**Example :** There was a violation of the right to respect for private life in a case of domestic violence where the children of the victim were obliged to see their violent father in a non-protective environment during several years, and

the mother's parental responsibility was suspended when she showed hostility towards these meetings. The Court held that both the children and mother's private life had been violated.

## 2.24 RIGHT TO FAIR TRIAL

Situations of domestic violence may also lead to criminal proceedings. For example, when the perpetrator is called to responsibility by the justice system. If the victims of domestic violence have been recognized as victims in criminal proceedings, they have a number of rights pertinent to a fair trial. For example, under certain circumstances, they have the right to free legal aid. If the failure of the State to ensure fair trial guarantees towards victims has resulted in an unfair process for the victims, it may lead to a violation of the right to a fair trial.

**For example :** States have an obligation to make criminal and civil remedies available, e.g., by setting up legal aid scheme for victims of domestic violence who do not have financial means to pay for the assistance of a lawyer.

Similarly, situations of domestic violence may involve civil dispute settlement. In addition, the fair trial rights of the party who has been the victim of domestic violence must be ensured in civil proceedings.

**Example :** There was a violation of the right to a fair trial in a case where the national courts had not examined the applicant's complaint about the failure to award the applicant compensation for suffering from domestic abuse, despite it being clearly stated in the national law that the courts had an obligation to rule on the matter of compensation, even without a formal request from the victim.

**Example :** There was a violation of the right to a fair trial in a case where a victim sought judicial separation from her physically abusive husband. As she was unable to

conclude a separation agreement with her husband, she sought a judicially ordered separation. She was unable to obtain such an order since she lacked the financial means, in the absence of legal aid, to retain a solicitor. The Court held this was a violation of her right to access a court for determination of her civil rights and obligations.

## 2.25 PROHIBITION OF DISCRIMINATION

Domestic violence is considered to be a form of discrimination against women, because it affects mainly women and it is induced by the general and discriminatory passivity and unresponsiveness of the public authorities and judicial system towards allegations of domestic violence. Violence against women is any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including the threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It has been acknowledged that violence against women seriously hampers women from using their rights and freedom on equal terms with men. Widespread prejudices and practices in society use gender-based violence as a form of protection or control of women.

The failure of the State to properly react to domestic violence cases, including the lack of a legal framework regarding domestic violence or the failure to utilize the existing law to adequately react to domestic violence crimes, which fosters a climate conducive for it, or the failure to provide protection for victims and/or deny the right to proper compensation, may result in a violation of the prohibition of discrimination in conjunction with the violation of the right to life, the prohibition of inhumane or degrading treatment, and the right to private and family life.

**Example :** The failure of law-enforcement authorities to take victims' allegations of domestic violence seriously, to conduct an effective investigation and to prevent gender-based violence was seen by the European Court of Human Rights as a discriminatory passivity which creates a climate conducive to a further proliferation of violence committed against victims, merely because they were women.

## SELF STUDY

**Answer the Following :**

1. Briefly explain the constitutional provisions of India on Human rights?
2. Summaries the provisions on Constitutional provisions in education, Right of Children to Free and Compulsory Education Act safeguarding, protecting human rights?
3. What does the right to constitutional remedies provide for?
4. What are the fundamental rights assigned to Human Rights Act through constitution?
5. Enumerate Article 352 on National Emergency under Human Right Act?
6. State & explain the types of emergencies?
7. What are the effects of Article 352?
8. What are the grounds for the national emergency under article 352?
9. What are the Constitutional rights and safeguards provided to the minorities in India?
10. What are the women's Human Rights Under Constitutional Framework?
11. Explain the constitutional legal framework on physically or disabled challenge person?
12. Summaries the provisions on Disabled or Physically challenged persons?
13. What are the provisions of domestic violence under human rights?

14. Give an insight on Article 2 of the European Convention under Human Rights Act?
15. What are the primary benefits of Section 2(a) on women & children Act?
16. How does the law ensure that a wife who takes legal recourse in the event is not intimidated or harassed?
17. Highlight the provisions on inhumane or degrading treatment?
18. Write a note on Prohibition of discrimination?
19. Write a note on Right to private and family life.
20. Define new Law on Domestic abuse.

# CHAPTER – 3

# United Nations Human Right Commission

Synopsis...

3.1 Introduction
3.2 The Main Objectives of the Human Rights Commission
3.3 How Many Members are in the Human Rights Commission?
3.4 What is the Difference Between UNHRC and UNHCR?
3.5 Human Rights Council
3.6 Complaint Mechanism Under the Human Rights Council
3.7 Special Procedures and Investigative Bodies
3.8 UN High Commissioner for Human Rights
3.9 Human Rights and the UN System
3.10 The Universal Declaration of Human Rights
3.11 The International Covenant on Economic, Social and Cultural Rights
3.12 The International Covenant on Civil and Political Rights and Its Optional Protocols
3.13 Regional Human Rights Systems and Developments
3.14 Human Rights in Europe
3.15 Human Rights in the Americas
3.16 Human Rights in Africa
3.17 Human Rights in the Arab world
3.18 Human Rights in Asia
3.19 International Human Rights in Domestic Courts
3.20 Human Rights in the Early 21st Century
3.21 Universal Declaration of Human Rights

3.22 United Nations Development Programme
3.23 Significance of Universal Declaration of Human Rights
3.24 State Human Rights Commissions
3.25 National Human Rights Commission
Self Study
Answer the following

## 3.1 INTRODUCTION

The Commission on Human Rights was intended to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms or mandates) as well as on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). The High Commissioner is mandated to respond to serious violations of human rights and to undertake preventive action. The Office of the High Commissioner for Human Rights (OHCHR) is the focal point for United Nations human rights activities. The United Nations Human Rights Committee is a treaty body composed of 18 experts, established by a 1966 human rights treaty, the International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Council is the main intergovernmental body within the United Nations responsible for human rights. Established in 2006 by the General Assembly, it is responsible for strengthening the promotion and protection of human rights around the globe. Headquartered in Geneva, with many regional offices, the Office of the High Commissioner for Human Rights has lead responsibility in the UN system for the promotion and protection of human rights. The Council is made of 47 Member States, which are elected by the majority of members of the General Assembly of the United Nations through direct and secret ballot.

## 3.2 THE MAIN OBJECTIVES OF THE HUMAN RIGHTS COMMISSION

The Commission is responsible for spreading of human rights awareness amongst the masses and encouraging the efforts of all stake holders in the field of human rights literacy not only at the national level but at international level too.

India was re-elected to the United Nations Human Rights Council (UNHRC) for the 2022-24 term on Oct 14, 2021 and vowed to continue to work to promote and protect human rights through "Samman, Samvad and Sahyog".

## 3.3 HOW MANY MEMBERS ARE IN THE HUMAN RIGHTS COMMISSION?

The Commission consists of a Chairperson, five full-time Members and seven deemed Members. The statute lays down qualifications for the appointment of the Chairperson and Members of the Commission.

## 3.4 WHAT IS THE DIFFERENCE BETWEEN UNHRC AND UNHCR?

The UNHRC (United Nations Human Rights Council) is concerned with human rights issue globally. The UNHCR (United Nations High Commissioner for Refugees aka the United Nations Refugee Agency) is concerned with monitoring & protecting displaced persons globally. the purpose of UNHRC?

## 3.5 HUMAN RIGHTS COUNCIL

The Human Rights Council, established on 15 March 2006 by the General Assembly and reporting directly to it, replaced the 60-year-old UN Commission on Human Rights as the key UN intergovernmental body responsible for human rights. The Council is made up of 47 State representatives and is tasked with strengthening the

promotion and protection of human rights around the globe by addressing situations of human rights violations and making recommendations on them, including responding to human rights emergencies.

The most innovative feature of the Human Rights Council is the Universal Periodic Review (UPR). This unique mechanism involves a review of the human rights records of all 193 UN member states once every four years. The Review is a cooperative, state-driven process, under the auspices of the Council, which provides the opportunity for each state to present measures taken and challenges to be met to improve the human rights situation in their country and to meet their international obligations.

The Review is designed to ensure universality and equality of treatment for every country and takes place during the sessions of the UPR Working Group which meets three times a year. The UPR Working Group consists of the 47 members of the Council.

## 3.6 COMPLAINT MECHANISM UNDER THE HUMAN RIGHTS COUNCIL

The central principle of the complaint processes under the human rights treaties is that anybody can file a complaint against a State Party claiming a complaint.

A case may be filed against a State only when it meets two conditions. First, it must be a party to the convention (through ratification or accession) that provides for the supposedly violated rights. Second, the State Party must have understood and recognized the committee's integrity.

Although it is not mandatory to send a report to a commission, often called a communication or a petition, in a standardized format, it is advised to use the model complaint forms and instructions attached below :

1. The complaint should be written, legible, ideally typed, and signed.
2. It is only possible to recognize correspondence sent in one of the official languages of the United Nations (Arabic, Chinese, English, French, Russian, and Spanish).
3. The complaint should include the complainant's identity, nationality, date of birth, postal address, and e-mail address, and other such basic personal information.
4. It is important to lay out all the evidence on which the complaint is based, in chronological order. The account must be as accurate and provide all the material related to the case as possible. The plaintiff (person filing the complaint) must claim that he or she finds the mentioned evidence to represent an infringement of the convention at issue.

## 3.7 SPECIAL PROCEDURES AND INVESTIGATIVE BODIES

The Human Rights Council also has special procedures that consist of independent human rights experts who have the mandate to report and advice on human rights from a thematic or country-specific perspective. These experts are not paid and are elected for 3-year mandates that can be extended for another three years. As of November 2023, there are 46 thematic and 14 country mandates.

Since 2006, the Council has set up various investigative bodies to look into alleged violations in specific countries. These have taken the form of fact-finding missions and commissions of inquiry. In addition, there is

one thematic body, known as **the Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement.**

## 3.8 UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The United Nations High Commissioner for Human Rights exercises principal responsibility for UN human rights activities. The High Commissioner is mandated to respond to serious violations of human rights and to undertake preventive action.

The Office of the High Commissioner for Human Rights (OHCHR) is the focal point for United Nations human rights activities. It serves as the secretariat for the Human Rights Council, the treaty bodies (expert committees that monitor treaty compliance) and other UN human rights organs. It also undertakes human rights field activities.

Most of the core human rights treaties have an oversight body which is responsible for reviewing the implementation of that treaty by the countries that have ratified it. Individuals, whose rights have been violated can file complaints directly to Committees overseeing human rights treaties.

## 3.9 HUMAN RIGHTS AND THE UN SYSTEM

Human rights is a cross-cutting theme in all UN policies and programme in the key areas of peace and security, development, humanitarian assistance, and economic and social affairs. As a result, virtually every UN body and specialized agency is involved to some degree in the protection of human rights. Some examples are the right to development, which is at the core of the Sustainable Development Goals; the right to food championed by the UN Food and Agriculture Organization, labour rights, defined and protected by the International Labour Organization, gender equality, which is

promulgated by UN Women, the rights of children, indigenous peoples, and disabled persons.

## 3.10 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) was adopted without dissent by the UN General Assembly on December 10, 1948. The catalogue of rights set out in it is scarcely less than the sum of most of the important traditional political and civil rights of national constitutions and legal systems, including equality before the law; protection against arbitrary arrest; the right to a fair trial; freedom from ex post facto criminal laws; the right to own property; freedom of thought, conscience, and religion; freedom of opinion and expression; and freedom of peaceful assembly and association. Also enumerated are such economic, social, and cultural rights as the right to work, the right to form and join trade unions, the right to rest and leisure, the right to a standard of living adequate for health and well-being, and the right to education.

The UDHR, it should be noted, is not a treaty. It was meant to proclaim "a common standard of achievement for all peoples and all nations" rather than enforceable legal obligations. Nevertheless, a number of its provisions have acquired a status juridically more important than originally intended, a reflection of its wide use, even by national courts, as a means of judging compliance with human rights obligations under the UN Charter. It is also one of the instruments constituting the International Bill of Human Rights.

## 3.11 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was opened for signature on December 16, 1966, and entered into force on January 3, 1976. Also part of the International Bill of Human Rights, it elaborates upon most of the economic, social, and cultural rights set forth in the Universal Declaration of Human Rights, including, among others, the right to work, the right to form and join trade unions, the right to health, and the right to education. Unlike its companion agreement, the International Covenant on Civil and Political Rights, however, generally this covenant, sometimes called a "promotional convention,"

## 3.12 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND ITS OPTIONAL PROTOCOLS

The International Covenant on Civil and Political Rights (ICCPR), likewise a part of the International Bill of Human Rights, was opened for signature on December 19, 1966, and entered into force on March 23, 1976. Just as the International Covenant on Economic, Social and Cultural Rights elaborates upon most of the economic social, and cultural rights enumerated in the Universal Declaration of Human Rights, so the ICCPR elaborates upon most of the civil and political rights set forth in the Universal Declaration of Human Rights, including the right to nondiscrimination but excluding the right to own property and the right to asylum. The covenant also designates several rights not listed in the Universal Declaration of Human Rights, among them the right of all peoples to self-determination and the right of ethnic, religious, and linguistic minorities to enjoy their own culture, to profess and practice their own religion, and to use their own

language. To the extent that the Universal Declaration of Human Rights and the covenant overlap, however, the latter is understood to explicate and help interpret the former.

In addition, the covenant calls for the establishment of a Human Rights Committee, comprising persons serving in their individual expert capacities, to study reports submitted by the state parties on measures they have adopted to give effect to the rights recognized in the covenant. For state parties that have expressly recognized the competence of the committee in this regard, the committee also may respond to allegations by one state party that another state party is not fulfilling its obligations under the covenant. If the committee is unable to resolve the problem, the matter is referred to an adhoc conciliation commission, which eventually reports its findings on all questions of fact, plus its views on the possibilities of an amicable solution. State parties that become party to the covenant's First Optional Protocol further recognize the competence of the Human Rights Committee to consider and act upon communications from individuals claiming to be victims of covenant violations, provided that the respondent state has recognized the competence of the committee in this regard and that domestic remedies have been exhausted demulating the legal standing given to individuals before the UN Commission on Human Rights after 1967.

Other treaty-based organs within the UN system that are similarly empowered to consider grievances from individuals in a quasi-judicial manner are the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of Persons with Disabilities, and the Committee on

Enforced Disappearances. Additionally, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the Optional Protocol to the Convention on the Rights of the Child contain provisions for individual complaints that are not yet operational.

The Second Optional Protocol of the International Covenant on Civil and Political Rights, which is aimed at abolishing the death penalty worldwide, was adopted in 1989 and entered into force in 1991. The protocol has been favorably received in most of the countries of western Europe and in many countries in the Americas, though not in the United States.

## Other UN human rights conventions and declarations

Numerous other human rights treaties drafted under UN auspices address a broad range of concerns. Supplementing the ICCPR and ICESCR considered above, the Office of the High Commissioner for Human Rights lists several other "core international human rights instruments," including the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1979 Convention on the Elimination of All Forms of Discrimination against Women; the 2002 Optional Protocol of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the 2006 Convention on the Rights of Persons with Disabilities. The OHCHR also details a non-exhaustive list of "other universal instruments relating to human rights" (although including the core instruments just noted). The list is nonetheless long and diverse and embraces declarations, principles, guidelines, standard rules, and recommendations which, according to the OHCHR, "have no binding legal effect," as well as covenants, statutes, protocols, and conventions that, it asserts, "are legally-binding." The wide scope of topical categories includes the

right of self-determination, the rights of indigenous peoples and minorities, social welfare, and humanitarian law (i.e., the humanitarian rules of armed conflict).

Thus, across a wide range of issues and themes and in addition to overseeing human rights treaties deemed legally binding in theory, the UN has adopted human rights instruments that are presumptively not legally binding, as is, in contrast, a treaty or a resolution of the Security Council. Such instruments—particularly when they enunciate principles of great and solemn importance—may nevertheless create strong expectations about authority and control. Perhaps the best-known examples subsequent to the Universal Declaration of Human Rights are the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (1970) which affirms, among other things, "the duty of all states to refrain from organizing, instigating, assisting or participating in...terrorist acts."

## 3.13 REGIONAL HUMAN RIGHTS SYSTEMS AND DEVELOPMENTS

Action for the international promotion and protection of human rights has proceeded at the regional level in Europe, the Americas, Africa, Southeast Asia, and the Middle East. By the first decade of the 21st century, however, only the first four of these regions had created enforcement mechanisms within the framework of a human rights charter.

## 3.14 HUMAN RIGHTS IN EUROPE

On November 4, 1950, the Council of Europe agreed to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the substantive

provisions of which were based on a draft of what is now the International Covenant on Civil and Political Rights. Together with its 11 additional protocols, this convention, which entered into force on September 3, 1953, represents the most advanced and successful international experiment in the field to date. Over the years, the enforcement mechanisms created by the convention have developed a considerable body of case law on questions regulated by the convention, which the state parties typically have honoured and respected. In some European states the provisions of the convention are deemed to be part of domestic constitutional or statutory law. Where this is not the case, the state parties have taken other measures to make their domestic laws conform with their obligations under the convention.

Not with standing these successes, a significant streamlining of the European human rights regime took place on November 1, 1998, when Protocol No. 11 to the convention entered into force. Pursuant to the protocol, two of the enforcement mechanisms created by the convention, the European Commission of Human Rights and the European Court of Human Rights were merged into a reconstituted court, which now is empowered to hear individual (as opposed to interstate) petitions or complaints without the prior approval of the local government. The decisions of the court are final and binding on the state parties to the convention.

A companion instrument to the European convention similar to but preceding the International Covenant on Economic, Social and Cultural Rights is the European Social Charter (1961) and its additional protocol (1988). In contrast to the adjudicatory enforcement procedures of the European convention, the charter's provisions are implemented through an elaborate system of control based on progress reports to the various committees and organs

of the Council of Europe. The revised European Social Charter, which was intended gradually to replace the 1961 charter and entered into force in 1999, modernizes its forebear's substantive provisions and strengthens its enforcement capabilities. The basic rights set forth in the revised charter concern housing; health; education, labour rights, employment, and parental leave; protection from poverty and social exclusion; free movement of persons and nondiscrimination; migrant worker rights; and nondiscrimination of persons with disabilities.

## 3.15 HUMAN RIGHTS IN THE AMERICAS

In 1948, concurrent with its establishment of the Organization of American States (OAS), the Ninth Pan-American Conference adopted the American Declaration on the Rights and Duties of Man, which, unlike the Universal Declaration of the UN adopted seven months later, set out the duties as well as the rights of individual citizens. Subsequently, in 1959, a meeting of the American Ministers for Foreign Affairs created the Inter-American Commission on Human Rights, which has since undertaken important investigative activities in the region. Finally, in 1969, the Inter-American Specialized Conference on Human Rights adopted the American Convention on Human Rights, which, among other things, after entering into force in July 1978, made the existing Inter-American Commission an organ of the convention and established the Inter-American Court of Human Rights, which sits in San José, Costa Rica. In November 1988, the OAS adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Of the 26 Western Hemispheric states that so far have signed the convention, only the United States has yet to ratify it. Nor is the United States a party to the additional protocol, which entered into force in November 1999.

The core structure of the Inter-American human rights system is similar to that of its European counterpart. Nevertheless, some noteworthy differences exist, and three stand out in particular. First, the American convention, reflecting the influence of the American Declaration, acknowledges the relationship between individual duties and individual rights. Second, the American convention reverses the priorities of the European convention prior to Protocol No. 11 by guaranteeing individual petitions while making interstate complaints optional. Finally, both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights operate beyond the framework of the American convention. The commission is as much an organ of the OAS Charter as of the American convention, with powers and procedures that differ significantly depending on the source of the commission's authority. The court, while primarily an organ of the convention, nonetheless has jurisdiction to interpret the human rights provisions of other treaties, including those of the OAS Charter.

## 3.16 HUMAN RIGHTS IN AFRICA

In 1981 the Eighteenth Assembly of Heads of State and Government of the Organization of African Unity (replaced by the African Union [AU] in 2002) adopted the African Charter on Human and Peoples' Rights. Also known as the "Banjul Charter" for having been drafted in Banjul, Gambia, it entered into force on October 21, 1986, and boasts the vast majority of the states of Africa as parties.

Like its American and early European counterparts, the African charter provides for a human rights commission (the African Commission on Human and Peoples' Rights) which has both promotional and protective functions. There is no restriction on who may file a complaint with it. In contrast to the European and American procedures, however, concerned states are encouraged to reach

friendly settlement without formally involving the investigative or conciliatory mechanisms of the commission. Also, the African charter did not, at the beginning, call for a human rights court. African customs and traditions, it has been said, have long emphasized mediation, conciliation, and consensus rather than the adversarial and adjudicative procedures that are common to Western legal systems. Owing largely to political changes wrought by the end of the Cold War, an African Court of Human and Peoples' Rights (ACHPR) was created in January 2004 to render judgments on the compliance by AU states with the African charter. The court did not replace the commission.

A year earlier, however, in 2003, there came into being the African Court of Justice (ACJ), intended to serve as the African Union (AU's) principal judicial body and, in this capacity, to rule on disputes over the interpretation of AU treaties. Concern for rising costs in the face of little forward movement on the part of the ACJ, however, led to proposals for the creation of a new court, the African Court of Justice and Human Rights (ACJHR). Designed to have two chambers, one for general legal matters that would supersede the ACJ, the other for judgments on the interpretation and application of human rights treaties, the ACJHR came into being when, in 2008, a merger protocol was adopted uniting the ACJ and the ACHPR. It was believed that the ACJHR had the potential to be progressively influential in the protection of human rights in Africa. It was also recognized, however, that this prospect above all the ACJHR's legitimacy depended on the independence and moral character of its judges and on the training and effectiveness of its staff.

It is, in any event, fair to say that the African human rights system was still in its infancy at the beginning of the 21st century, given especially the turmoil and violence that beset northern and sub-Saharan Africa during this time.

But four distinctive features of the African charter and thus, the African human rights system are noteworthy and give reason for hope. First, the charter provides for economic, social, and cultural rights as well as civil and political rights. In this respect it resembles the American convention and differs from the European convention. Second, in contrast to both the European and American conventions, it recognizes the rights of groups in addition to the family, women, and children. The aged and the infirm are accorded special protection also, and the right of peoples to self-determination is elaborated in the right to existence, equality, and non-domination. Third, it uniquely embraces two third-generation, or "solidarity," rights: the right to economic, social, and cultural development and the right to national and international peace and security. It differs from other treaties also by detailing individual duties as well as individual rights to the family, society, the state and the international African community.

## 3.17 HUMAN RIGHTS IN THE ARAB WORLD

In September 1968 the Council of the League of Arab States created the Arab Commission on Human Rights. Its main purposes were to inform the Arab public about and otherwise promote human rights, not to monitor the human rights practices of the Arab states or to challenge their violations of human rights when found. Primarily the commission has been preoccupied with the rights of Arabs living in Israeli-occupied territories.

On May 22, 2004, however, the Arab League adopted the Arab Charter on Human Rights, which entered into force on March 15, 2008. The charter affirms the principles set forth in the International Bill of Human Rights including, for example, the right to liberty and security of persons, equality of persons before the law, protection of persons from torture, the right to own private property

freedom to practice religion, and freedom of peaceful assembly and association.

At the same time, the charter does not prohibit cruel, inhuman, or degrading punishments, fails to extend rights to non-citizens in many areas, and authorizes restrictions on freedom of thought, conscience, and religion that exceed what is deemed permissible under international human rights law. Furthermore, the charter relegates many important rights issues to the discretion of national legislation e.g., the death penalty against children and the rights of men and women in marriage.

Additionally, the charter affirms the principles set forth in the 1990 Cairo Declaration on Human Rights in Islam, a declaration of the member states of the Organization of the Islamic Conference that provides an Islamic perspective on human rights and affirms that all the rights and freedoms mentioned in the declaration are subject to Shariah, or Islamic law, stated in Article 25 to be "the only source of reference for the explanation or clarification of any of the articles of [the] Declaration." Accordingly, though using universalist language akin to that found in the International Bill of Human Rights, the Arab charter is imbued with an "Islamic particularity." It also expresses Arab concern regarding territorial disputes between Israel and the Palestinians. Thus, its controversial Article 2(3) provides that all forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.

The charter also provides for the election of a seven-person Committee of Experts on Human Rights, which is empowered to request and study reports and to submit its own findings to the commission. No other institutions or

procedures for monitoring human rights are specified in the charter, however. In this sense as well as others, the Arab human rights system compares unfavorably with its European, Inter-American, and African counterparts.

## 3.18 HUMAN RIGHTS IN ASIA

Despite efforts by NGOs and the United Nations, Asian states were at best ambivalent and at worst hostile to human rights concerns over many years, thus precluding agreement on almost all regional human rights initiatives. But in early 1993, anticipating the World Conference on Human Rights held in Vienna later that year, a conference of Asia-Pacific NGOs adopted an Asia-Pacific Declaration of Human Rights, and in 1998 another meeting of NGOs adopted an Asian Human Rights Charter. Both of these initiatives supported the universality and indivisibility of human rights. However, while the first initiative called for the creation of a regional human rights regime, the second urged instead the establishment of national human rights commissions and so-called "People's Tribunals," which would be based more on moral and spiritual foundations rather than on legal ones.

The states of Asia were slow to respond to these initiatives. Their positions were indicated at a UN-sponsored workshop in 1996, where the 30 participating states concluded that "it was premature to discuss specific arrangements relating to the setting up of a formal human rights mechanism in the Asian and Pacific region." The process necessary for establishing a regional mechanism", a promise that echoed a similar pledge made by ASEAN (the Association of Southeast Asian Nations) following the 1993 UN World Conference on Human Rights.

More than 14 years later, in November 2007, ASEAN's 10 member states adopted the ASEAN Charter, which, following its entry into force in December 2008, gave ASEAN legal personality, established its organizational framework and procedures, and provided for a human rights body that would promote and protect human rights as signaled in the charter's preamble, purposes, and principles. In October 2009 ASEAN's member states formally established the ASEAN Intergovernmental Commission on Human Rights, and in November 2012 they adopted ASEAN's first-ever Human Rights Declaration.

In Southeast Asia and around the world, however, ASEAN's declaration has been greeted with skepticism. Many respected rights groups, including Amnesty International , criticized the declaration for being an unhappy compromise between ASEAN's communist and non-communist member state; for containing language both too broad and too restrictive to guarantee people's rights; and for otherwise falling short of international human rights standards. Of particular concern were provisions that called for rights to be enjoyed in a "balanced" way, subject to "national and regional contexts" and deferential to "different cultural, religious and historical backgrounds," thus challenging the quintessential universality of human rights. Additionally, critics challenged the declaration for having been drafted in a non-inclusive, non-transparent manner, and they faulted ASEAN's charter for failing to mandate powers sufficient for its enforcement. Accordingly, they called upon ASEAN leaders to return the declaration to the ASEAN Intergovernmental Commission on Human Rights explicitly to redraft the declaration in an inclusive and transparent manner and in keeping with internationally recognized human rights law and standards.

Not to be overlooked, however, are other developments bearing upon human rights instruments and mechanisms in Southeast Asia, specifically in relation to particular groups of people. In January 2007 members of ASEAN adopted a common declaration in which they recognized the need for a new instrument to protect and promote the rights of migrant workers. In April 2010, the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children was inaugurated in Hanoi.

## 3.19 INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS

Using domestic courts to clarify and safeguard international human rights is a relatively new and still evolving approach to human rights advocacy, particularly when civil as distinct from criminal litigation is called into play. In addition to the inevitable interpretative problems involved in applying norms fashioned in multicultural settings, controversial theories about the interrelation of national and international law, as well as many procedural difficulties, burden the human rights claimant in this setting. To be sure, significant progress has been made, as is perhaps best evidenced, at least insofar as the United States is concerned, in the far-reaching decision handed down by the U.S. Court of Appeals for the Second Circuit in Filártiga v. Peña-Irala (1980). In that case, the court interpreted a theretofore obscure provision of the Judiciary Act of 1789 known as the Alien Tort Statute (ATS) as allowing foreign victims of human rights abuses by foreign wrongdoers in foreign countries to seek civil remedies in the U.S. judicial system, holding that the "well-established universal" prohibition of torture under customary international law, which applies regardless of the

nationality of the victim or the perpetrator (at least in the case of private litigants), must be honored in U.S. courts

In 1998–99, the United Kingdom's highest tribunal, the Law Lords of the British House of Lords, captured international attention when, in response to an extradition request by a Spanish court, it upheld the arrest in England of former Chilean president Augusto Pinochet on charges of torture and conspiracy to commit torture in violation of international treaty law. Although Pinochet was later returned to Chile for reasons of ill health and was declared by a Chilean court to be mentally unfit to stand trial, the Law Lords' ruling established the precedent that former heads of state do not enjoy immunity from prosecution, at least for systematic human rights crimes. In addition, a considerable number of British cases, decided in the absence of national legislation expressly enabling claims for extraterritorial human rights abuses and therefore based on principles of common-law tort, have revealed a willingness to hold corporations liable for human rights violations perpetrated abroad. European Union (EU) regulations and civil-law cases within EU member states, assisted by broadened EU and member-state laws regulating tort cases, are similarly inclined, even to the point of referencing customary international law to reinforce legislative intent and allow for universal civil jurisdiction on a "necessity basis."

## 3.20 HUMAN RIGHTS IN THE EARLY 21ST CENTURY

Whatever the current attitudes and policies of governments, the reality of popular demands for human rights, including both greater economic justice and greater political freedom, is beyond debate. A deepening and widening concern for the promotion and protection of

human rights on all fronts, hastened by the ideal of self-determination in a postcolonial era, is now unmistakably woven into the fabric of contemporary world affairs.

Substantially responsible for this progressive development has been the work of the UN, its allied agencies, and such regional organizations as the Council of Europe, the OAS, and the AU. Also contributing to this development, particularly since the 1970s and '80s, have been six other salient factors :

1. the emergence of nationalism and rising expectations in the developing world following the post-World War II dismantling of colonial empires,
2. the public advocacy of human rights as a key aspect of national foreign policies, made initially legitimate by the example of U.S. President Jimmy Carter,
3. the emergence and spread of civil society on a transnational basis, primarily in the form of activist nongovernmental human rights organizations,
4. a worldwide profusion of teaching and research devoted to the study of human rights in both formal and informal settings,
5. the proliferation of large UN conferences in areas such as children's rights, population, social development, women's rights, human settlements, and food production and distribution, and
6. a feminist intellectual and political challenge regarding not only the rights of women worldwide but also what feminists consider to be the paternalistic myths and mythic structures that purport to define humane governance generally.

To be sure, because the application of international human rights law depends for the most part on the voluntary consent of nations, formidable obstacles attend the endeavor of human rights policy makers, activists, and scholars. Human rights conventions continue to be undermined by the failure of states to ratify them, by emasculating reservations and derogation, by self-serving reporting systems that outnumber objective complaint procedures, and by poor financing for the implementation of human rights prescriptions. In short, the mechanisms for the enforcement of human rights are still in their infancy, a situation due in no small measure to the post-Cold War dominance of Neo-liberalism in world affairs, which is strongly resistant to state and market regulation of the economy. In this context, the vexing question of corporate accountability for human rights abuses, and the dangers to human rights values and capabilities posed by overbearing corporate power, also present complex contemporary challenges for the future of human rights. Nevertheless, it is certain that, out of necessity no less than out of realism, a palpable concern for the advancement of human rights is here to stay.

## 3.21 UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights [UDHR] is an international document that consists of 30 articles explaining the fundamental and basic rights of an individual. The UDHR is considered the first step required for the establishment of the International Bill of Human Rights. The bill was formed in 1966 and was accepted in 1976. It is not a legally binding declaration. However, it has been incorporated into the legal codes of different countries, instruments, regional human rights, and international treaties.

## History of UDHR

Two months after WWII ended, 51 countries joine hands and the United Nations in October 1945 to prote the world from any disaster, like the ongoing global refuge crisis and nuclear bombings of Hiroshima and Nagasak The wife of Franklin Delano Roosevelt, Eleanor Roosevel suggested the importance of formulating the Univers Human Rights Declaration. Later in April 1946, Eleano Roosevelt became the UN Commission on Human Right Chairperson and drafted the human rights declaration. He desires for global peace and ideals about human right were formed by her experiences during WWI & WWI However, it wasn't an easy task. The UN General Assembl adopted the declaration on December 10, 1946. Thus December 10 is celebrated as International Human Right Day or World Human Rights Day.

## Salient Features of UDHR

The UDHR's structure was influenced by Code Napoleon (laws formulated by Napoléon Bonaparte However, the final structure of the Universal Declaration o Human Rights was prepared in the second draft by Rene Cassin, the French jurist. The Declaration of the UDHR consists of a total of 30 articles. These are –

- **Articles 1 & 2 :** It established the basic concepts o equality, liberty, and dignity.
- **Articles 3 to 5 :** Explain the details of individua rights. E.g., prohibition of slavery, right to life, etc.
- **Articles 6 to 11 :** It has provisions for fundamenta human rights and the remedies related to thei violation.

- **Articles 12 to 17 :** It deals with the right of an individual towards the community, including the right to nationality, the right of property, etc.
- **Articles 18 to 21 :** These Articles refer to the rights of an individual towards the community, including the freedom of expression, ideas, peaceful association, religion, opinion, thought, movement, etc., through any media.
- **Articles 22 to 27 :** It sanctions the cultural, social, and economic rights of an individual, including healthcare.
- **Article 28 to 30 :** Article 28 to 30 of the UDHR establishes the general principles of exercising these rights.

## Universal Declaration of Human Rights and Provisions of India

The Indian Constitution has adopted a lot of rights listed in the Universal Declaration as the Directive Principles of State Policy and Fundamental Rights. These are explained below-

- **Directive Principles of State Policy : Article 36 to 51** of the Indian Constitution has provisions for the Directive Principles of State Policy. It includes equal justice & free legal aid, the right to free & compulsory education, the right to existence worthy of human dignity, the right to equal pay for equal work, protection against unemployment, the right to free choice of employment, the right to work, right to social security, and the principles of state's policy.

➢ **Fundamental Rights :** The Fundamental Rights a provisioned from Articles 12 to 35 of the India Constitution. This includes the Right Constitutional Remedies, Saving of Certain Law Cultural & Educational Rights, Right to Freedom Religion, Right Against Exploitation, Right Freedom and Right to Equality.

The National Human Rights Commission was provide for the Indian Constitution at the union level aft introducing the Protection of Human Rights Act of 199 The commission steers Human Rights Courts for bett protection of Human Rights, the State Human Righ Commission at the State Level, and the concerning matter India has come up with various Government Schemes a initiatives for the poor, women, trans-genders, childre divyang jan, and migrants –

- One Nation-One Ration Card
- Deen Dayal Disabled Rehabilitation Scheme
- Accessible India Campaign : Creation of Accessibl Environment for PwDs.
- Assistance to Disabled Persons Scheme
- PM-CARES for Children Scheme
- National Portal for Transgender Persons, Garim Greh.
- Triple talaq
- Pradhan Mantri Matru Vandana Yojana (PMMVY)
- Pradhan Mantri Awaas Yojana-Gramin
- Ujjwala gas connections- Pradhan Mantri Ujjwal Yojana Scheme.
- Rupay card
- Jan Dhan Account

## 3.22 UNITED NATIONS DEVELOPMENT PROGRAMME

The United Nations Development Programme (UNDP) describes human rights as a major aspect of its work and an important part of human development, thus a central component of equitable development. The Human Development Report, which has become a global reference document worldwide, is released every year by UNDP. The study goes beyond the comparison of GDP statistics alone, with life expectancy, schooling, adult literacy, and gross school enrollment included in its measure of growth.

In the field of human rights and human protection, core elements of UNDP's work include :

- Supporting the implementation of National Action Plans on Human Rights;
- Application of the rights-based programming approach;
- Assistance for human rights programs including public education, awareness-raising activities, enhancement or establishment of ombudsman's offices, and extension to sub-national levels of human rights organizations

## 3.23 SIGNIFICANCE OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights is considered the inventive document that provides a universal and comprehensive set of principles in an apolitical and secular document without any restrictions on political, religious, and cultural ideologies. With the adoption of UDHR, human rights were recognized as the foundation of freedom, peace, justice, and freedom. It marked the equality of humans without any discrimination

based on religion, creed, colour, sex, or any other characteristics. It served as the foundation for international and national laws and standards worldwide.

## 3.24 STATE HUMAN RIGHTS COMMISSIONS

The 1993 Protection of Human Rights Act provides for the establishment, at the state level, of the State Human Rights Commission. In the seventh schedule of the Indian Constitution, a State Human Rights Commission will investigate abuses of human rights relating to subjects protected by the state list and the concurrent list.

### Functions of the Commission

1. Inquire suo motu, or on a petition lodged by a victim or another person on his or her behalf, to inquire about a breach of human rights or incompetence in stopping a public official from committing such a violation.
2. Visit any prison or any other facility under the jurisdiction of the State Government where people are imprisoned to research and make recommendations on the living conditions of the prisoners.
3. Spreading literacy on human rights across different parts of society and fostering understanding of the protections available to secure these rights.
4. The commission is empowered to control its own operation. It has all the powers of a civil court and has a judicial character in its procedures. It can ask the state government or some other subordinate authority for information or reporting.

## 3.25 NATIONAL HUMAN RIGHTS COMMISSION

The NHRC of India is an independent legislative body constituted on 12 October 1993 under the provisions of the Protection of Human Rights Act, 1993, later amended in 2006. It is the country's human rights watchdog, i.e. the rights of the citizen relating to life, liberty, freedom and dignity protected by the Indian Constitution or expressed in international agreements and enforceable by courts in India.

### Functions of NHRC

1. Either suo moto or after receiving a petition, NHRC addresses allegations about the abuse of human rights. It has the authority to intervene in all legal cases that include the accusation of human rights abuses.
2. NHRC works to spread human rights literacy across different parts of society and, through journals, newspapers, seminars and other ways, promotes understanding of the protections available for the defense of these rights.
3. Both federal and state governments may be urged to take adequate measures to avoid human rights abuses by the committee. It shall send its annual report to the President of India, who shall make it public to each House of Parliament.
4. On 22nd December 2020, the NHRC sought reports on cases of witchcraft in Odisha. The NHRC also instructed authorities, with the aid of recognized NGOs, to carry out awareness campaigns in schools and to offer monetary compensation to victims or relatives of victims who were "killed, maimed, burned or assaulted on the suspicion/allegation of witchcraft".

## SELF STUDY

**Answer the Following :**

1. What functions have been assigned to the Commission unde the Act?
2. What powers have been vested with the Commission relatin to inquiries?
2. Does the Commission have its own investigation team?
3. Is the Commission Autonomous?
4. How does the Commission inquire into complaints?
5. What steps are open to the Commission after inquiry?
6. What procedure is prescribed under the Act with respect t armed forces?
7. Can the complaint be in any language?
8. What kind of complaints are not entertained by the Commission?
10. What is the responsibility of the authority/State/Centra Governments to which reports/recommendations have bee send by the Commission?
11. What are the kinds of issues on which complaints have bee received?
12. What has been focus of the Commission's Working?
13. What are its major initiatives?
14. What is the composition of the Commission?
15. Where is the Commission located and what are its contac numbers?
16. Bring out the functions of UDHR.
17. Enumerate the powers of United Nations Commission.
18. Discuss the impact of International Convention on Economic Rights.
19. Write a note on Human Rights Council.
20. Explain complaint mechanism under the Human Rights Council?

21. Explain Special Procedures and Investigative Bodies with special reference to Human council.
22. Explain provisions relating to UN High Commissioner for Human Rights.
23. Write a note on the Universal Declaration of Human Rights
24. Explain the International Covenant on Civil and Political Rights and Its Optional Protocols?
25. Summaries the Human rights in Europe, Americas, Africa, Arab world, Asia?
26. Enumerate the provisions on International human rights in domestic courts?
27. State the human rights in the early 21st century.
28. Describe in Universal Declaration of Human Rights?
29. What are the salient Features of UDHR?
30. Explain Universal Declaration of Human Rights and Provisions of India.
31. Writ a detailed note on United Nations Development Programme.
32. What are the significance of Universal Declaration of Human Rights?
33. What are the functions of state Commission?